

SECTION 00700
GENERAL TERMS AND CONDITIONS
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ARTICLE 1: GENERAL PROVISIONS

1.0 DEFINITIONS

- A. **"Change Order"** means a written instrument designated to be a Change Order issued by the County which provides for an adjustment to the Contract terms. No changes will be made to the Contract Price or Contract Time.
- B. **"Change Proposal" NOT USED**
- C. **"Claim"** means a written demand by the Contractor seeking (1) the payment of money in a sum certain; (2) an extension of Contract Time; (3) an adjustment of contract terms; and/or, (4) other relief arising under or relating to this Contract.
- D. The **"Contract"** or **"Contract Documents"** constitute the entire integrated agreement between King County and the Contractor for the performance of the Work. The Contract Documents include the following:
 - 1. The signed King County Standard Agreement between County and Contractor (the "Agreement Form");
 - 2. Work Order
 - 3. The Bid Form and Addenda;
 - 4. Affidavits, Certifications and Bonds as specified in the Contract;
 - 5. The General Conditions;
 - 6. The Special and/or Supplementary Conditions;
 - 7. The Drawings and Detail Drawings;
 - 8. The Technical Specifications, Divisions 1 through 17;
 - 9. Any Change Orders; and,
 - 10. Invitation to Bid, which includes all sections in Division 0, if not previously listed.
- E. **"Contract Price"** means the total Not to Exceed amount payable by the County to the Contractor for performance of the Work in accordance with the Contract.
- F. **"Contract Time"** means the total time allowed the Contractor to perform Work under this Contract. The Contract Time shall end 365 calendar days after the date of Contract execution by the County; provided however, at the County's sole discretion, this Contract may be extended for one additional year or until the Not to Exceed Contract Price is reached, whichever occurs first. If the County elects to extend the Contract Time the County shall issue a Change Order. In no event shall the Contract Time be greater than two years from the date of Contract execution by the County.
- G. **"Contract Work"** or **"Work"** refers to the labor, materials, equipment, supplies, services, and other items necessary for the execution, completion and fulfillment of the Contract by the Contractor to the satisfaction of King County.
- H. **"Contractor"** means the individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with King County to do the Contract Work.
- I. **"Critical Path" NOT USED**
- J. **"Day"** means calendar day, unless otherwise specified.

- K. **"Field Directive"** is a document, titled Field Directive, prepared by the County directing the Contractor to proceed promptly with specific work and shall not, in and of itself, constitute Contractor's entitlement to an Amended Work Order.
- L. **"Final Acceptance"** is the written acceptance issued to the Contractor by the County after the Contractor has completed the requirements of the Contract.
- M. **"Force Majeure"** means a delay which impacts the timely performance of Work which neither the Contractor nor the County are liable for because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
1. Acts of God or the public enemy;
 2. Acts or omissions of any government entity;
 3. Fire or other casualty for which a party is not responsible;
 4. Quarantine or epidemic;
 5. Strike or defensive lockout; and,
 6. Unusually Severe Weather Conditions.
- N. **"Hazardous Material"** means any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive, radioactive material, urea formaldehyde foam insulation, asbestos, PCBs, or any other substances the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling, or shipment of which is restricted, prohibited, regulated, or penalized by any and all federal, state, county, or municipal statutes or laws now or at any time hereafter in effect, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U. S. C. §§ 9601, *et seq.*), the Hazardous Materials Transportation Act (49 U. S. C. §§ 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U. S. C. §§ 6901, *et seq.*), the Federal Water Pollution Control Act (33 U. S. C. §§ 1251, *et seq.*) the Clean Air Act (42 U. S. C. §§ 7401, *et seq.*), the Toxic Substances Control Act, as amended (15 U. S. C. §§ 2601, *et seq.*), and the Occupational Safety and Health Act (29 U. S. C. §§ 651, *et seq.*, Model Toxics Control Act (RCW 70.105), or similar state or local statute or code), as the laws have been amended and supplemented.
- O. **"King County"** or **"County"** or **"Owner"** may be used interchangeably and refers to the County of King, a municipal corporation and a home rule charter county of the state of Washington. The term "County" shall also include any individuals designated to perform technical and/or administrative functions pursuant to provision 2.0, *Authority*. All communications with the County shall be through such individuals.
- P. **"Notice"** means a written document initiated by the authorized representative of either party to this Contract given by:
1. Depositing in the U. S. Mail (or approved commercial express mail) prepaid to the address of the appropriate authorized representative of the County or the Contractor, which shall be effective on the date of Receipt;
 2. Service on the parties' authorized representative or at the Contractor's home office or field office, which shall be effective on the date of service; or,

3. Facsimile or email to the parties' authorized representative or Contractor's home office or field office, which shall be effective upon receipt.
- Q. **"Notice To Proceed"** is a written directive issued by the County authorizing the Contractor to start performance of the Work and establishing the date after which the Contractor may commence the Work.
- R. **"Overhead"** refers to charges that may be incurred or allocated in support of the Contract but are not part of the cost of directly performing the physical Contract construction activity. Such Overhead includes, but is not limited to the Contract "site" or "field" overhead costs and the home office (general and administrative) overhead costs.
1. On-Site or Field Office Overhead
- On-Site or Field Overhead costs are typically those costs that include, but are not limited to supervision (to specifically include all general foremen and their supervisors), planners, schedulers, engineers, managers, etc. and the direct payroll costs of their project-related service; clerical salaries and their direct payroll costs and the costs of all vehicles, travel, meal and lodging costs associated with those personnel; On-Site or Field office and utility expense; expenses associated with all regulatory compliance; mobilization and demobilization of work force on-site; crew transportation to and from site; hand and other small tools (any tool with a wholesale value of less than \$500) provided by the Contractor for the use of its forces; all expendable supplies; the cost of all safety gear reasonably necessary for the protection of the worker on site; and all other items incidental to or integral in supporting the physical completion of the Work.
2. Home Office Overhead
- Home Office Overhead costs are typically those that include all general office expenses not on site. Such costs include, but are not limited to those associated with officer and office salaries and related payroll taxes and benefits, costs of office occupancy and maintenance, all supporting services (such as utilities, office machines computers, and related items and support) related to the home office function, business taxes and licenses, and all such other costs necessary to operate the business entity.
3. In addition to the above, whether treated as On-Site or Field Office Overhead or as Home Office Overhead, insurance(s), and taxes associated with this Contract are to be considered as Overhead. All items as those identified above are to be treated as Overhead for this purpose regardless of how the Contractor chooses to account for them in its books of account.
4. Under no circumstances shall the County pay the Contractor for direct or allocated costs or charges for officer bonus and profit sharing, project personnel bonuses, charitable contributions, income taxes, or any costs relating to illegal activity.
- S. **"Project"** refers to all activity relative to this Contract including activity of the Contractor, its Subcontractors, the County and the County's Representatives.
- T. **"Request for an Amended Work Order"** means a document, designated as a Request for an Amended Work Order, prepared by the Contractor requesting an adjustment to a Work Order's time or Price.

- U. **"Request for Information"** is a request from the Contractor to the County seeking an interpretation or a clarification of some requirement of the Contract Documents.
- V. **"Site"** or **"Project Site"** shall be understood to refer to the locations at which construction, equipment or services furnished by the Contractor under a Work Order will be performed, completed and/or delivered.
- W. **"Subcontractor"** shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Contract. When the County refers to Subcontractor(s) in this document, for purposes of this document and unless otherwise stated herein, the terms Subcontractor(s) includes, at every level and/or tier, all subcontractors, subconsultants, suppliers, and materialmen.
- X. **"Substantial Completion" NOT USED**
- Y. **"Total Cost Method"** means any cost method, or variety of cost methods, using the difference between the actual cost of the work and the bid price of the work to calculate the money owed to the Contractor.
- Z. **"Unusually Severe Weather Conditions"** shall be defined and calculated as follows: Precipitation (such as rain, hail or snow), low temperature, windstorms, ice, and other conditions which could reasonably have been anticipated from the National Weather Service historical records for the general locality of the Work shall not be construed as unusually severe weather. It is hereby agreed that precipitation greater than the following, temperatures less than the following, and wind velocities greater than the following, cannot be reasonably anticipated:
1. Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by 15 to 100 percent.
 2. Daily rainfall equal to, or greater than, 0.20 inch during a month when the monthly rainfall exceeds the normal monthly average by more than 100 percent.
 3. Daily rainfall equal to, or greater than, 1.0 inch at any time.
 4. Daily maximum temperature equal to, or less than, 20 degrees F during a week when the maximum daily temperature never exceeds 35 degrees F.
 5. Daily maximum temperature equal to, or less than, 25 degrees F during a week when the maximum daily temperature never exceeds 30 degrees F.
 6. Daily maximum temperature equal to, or less than, 15 degrees F at any time.
 7. Daily maximum wind velocity equal to or greater than 50 mph at any time.

Ice, snow and other weather conditions, not described above, may still be considered as unusually severe at the sole discretion of the County upon written request by the Contractor. Such written request shall describe in detail the weather conditions, identify the specific impacts resulting from the weather condition, and be submitted to the County within five days of the onset of the unusually severe weather condition.

To preclude the difficulties of actual measurement, the parties hereto agree that weather data at the Site of the Work shall be expressly deemed to be the same as that measured at the Seattle-Tacoma International Airport by the Environmental Data and Information Service of the National Oceanic and Atmospheric Administration ("NOAA") of the U. S. Department of Commerce.

For the purposes of this provision, a “month” shall mean a calendar month and a “week” shall mean a calendar week of Sunday through Saturday.

AA. **“Work Order”** means the document that memorializes agreement between the Contractor and the County, in accordance with the terms of the Contract Documents, by which the Contractor shall supply the labor, materials, equipment, supplies, services, and other items necessary for the execution and completion of specific work to the satisfaction of King County. Work Orders may be amended. **Amended Work Order** means the document that memorializes the agreement between the Contractor and the County identifying changes in the work of a particular Work Order(s) and the changes in price and/or schedule for that Work Order. Unless otherwise specified as Amended Work Order, throughout this Section 00700, the term “Work Order” shall include “Amended Work Order”.

BB. **“Work Order Price”** means the total dollar amount to be paid for a Work Order in accordance with the terms and conditions of the Contract Documents, including but not limited to Section 00300, Form of Bid, and Section 01025, Measurement and Payment.

CC. **“Work Order Time”** means the number of days stated in the Work Order for the completion of the work specified in that Work Order.

1.1 INTENT AND INTERPRETATION OF THE DOCUMENTS

- A. The Contract Documents constitute the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations, or agreements, either written or oral.
- B. The Contract Documents shall not be construed to create a contractual relationship between any parties other than the County and the Contractor. No contract between the County and a third party shall be construed to create any duty on the part of the County or such third party to the Contractor. The Contractor is not an intended or incidental beneficiary of any promises made in the County's contract with a third party, if any.
- C. The Contract Documents are intended to be complementary. What is required by one part of the Contract shall be as binding as if required by all. Should any conflict or inconsistency be found in the Contract Documents, the County shall resolve any such conflict or inconsistency in accordance with provision 1.2, *Order of Precedence*.
- D. Where the words “similar,” “typical” (or their equivalents) are used in the Contract, they shall mean nearly corresponding, having a likeness. Such words shall not be construed to mean that all parts of the Work referred to are identical or substantially identical, or that such elements of the Work are connected identically or substantially identically to the rest of the Work. The Contractor has the responsibility to determine all details of the Work in relation to their location and connection to other parts of the Work. Words importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular; and words importing the male gender may be extended to females also.
- E. The organization of the specifications into divisions, provisions and articles and the organization of the Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Contractor is responsible for establishing the manner, means, methods, and mode of performance of the Contract Work.

- F. The intent of the Contract is to prescribe a complete work. The Contractor shall provide, coordinate and supervise all labor, services, materials, tools, equipment, transportation, supplies and incidentals required to complete all work in compliance with the requirements of each Work Order of the Contract. The Contract Price shall not exceed the Not To Exceed amount set forth elsewhere in the Contract Documents. Each Work Order will address the scope of work and completion milestones, and shall be performed as directed by the Project Representative pursuant to the Technical Specifications herein or the Specification(s) and/or Drawings issued with each Work Order. King County does not guarantee any minimum amount of work or that the value of the Work Orders issued will total the Not To Exceed Contract Price.
- G. All references to Articles or provisions followed by a number and title is text to be found in this Section 00700.

1.2 ORDER OF PRECEDENCE

Any conflict or inconsistency between the terms or conditions of the Contract Document shall be resolved by the following descending order of precedence (with 1 taking precedence over 2, 3, 4, 5, 6 and 7; 2 taking precedence over 3, 4, 5, 6 and 7; and so forth):

1. Change Orders;
2. Agreement;
3. Amended Work Order(s);
4. Work Order(s), includes Technical Specifications, Drawing Details and Drawings issued with Work Order(s);
5. Bid Form;
6. Technical Specifications, Divisions 1 through 17 included as part of the original solicitation ;
7. Drawing Details;
8. Drawings;
9. Special or Supplementary Conditions;
10. General Terms and Conditions;
11. Certificates/Bonds/Affidavits; and,
12. Invitation for Bid, including all sections in Division 0 not specifically referenced above.

In the event there exists a conflict, inconsistency, or ambiguity within the terms or conditions of one of the Contract Document categories set forth above, the more stringent or more costly requirements shall be deemed to have been intended and to have been included in the original Contract Price.

1.3 DETAIL DRAWINGS AND CLARIFYING INSTRUCTIONS

Where on any drawing, a portion of the Work is drawn out and the remainder is indicated in outline, the drawn out parts shall apply also to other similar portions of the Work. Where ornament or other detail is indicated by starting only, such detail shall be continued throughout the courses or parts in which it occurs and shall apply to all other

similar parts of the Work, unless otherwise indicated. Additionally, with regard to drawings the following shall apply:

1. Written dimensions shall be followed; drawings may not be to scale.
2. Figure dimensions on drawings shall govern over scale dimensions; and detail drawings shall govern over general drawings.

ARTICLE 2: COUNTY

2.0 AUTHORITY

- A. The Project Representative is the County's point of contact for the Contractor. The County shall identify a Project Representative and delineate the Project Representative's authority prior to or concurrent with the County's issuance of the Notice to Proceed. Unless the County, in writing, indicates otherwise, the authority to (1) commit to or bind the County to any Change Orders or (2) sign the contract or change orders rests solely in the King County Executive or its designee. When appropriate, the Project Representative shall provide the Contractor with a delegation of authority which identifies the person who has authority to sign the contract and/or bind the County to changes in Contract Price.
- B. The Project Representative shall be responsible for ensuring strict compliance with the terms of the Contract and safeguarding the interest of the County in its contractual relationships. The Project Representative shall have the authority to administer the Contract. Administration of the contract by the Project Representative includes but is not limited to:
 1. Receiving all correspondence and information from the Contractor;
 2. Issuing and approving Work Orders;
 3. Responding to Requests For Information;
 4. Reviewing the schedule of values, project schedules, submittals, testing and inspection reports, substitution requests, and other documentation submitted by the Contractor;
 5. Negotiating Work Orders;
 6. Recommending Change Orders for approval by the King County Executive or its designee;
 7. Issuing decisions with respect to Requests for Change Orders and Claims;
 8. Processing payment requests submitted by the Contractor, and recommending payment;
 9. Monitoring the quality of the work and recommending acceptance of the work;
 10. Transmitting communication documents to the Contractor, and
 11. Performing all other contract administrative functions.
- C. All correspondence, questions, and/or documentation shall be submitted to the Project Representative and the Project Representative shall disseminate such documentation appropriately.
- D. The Project Representative may designate Technical Representatives to perform functions under the Contract, such as review and/or inspection and acceptance of

supplies, services, including construction, and other functions of a technical or administrative nature. The Project Representative will provide a written notice of such designation to the Contractor. The Project Representative may add to or modify in writing these designations from time to time. The designation letter will set forth the authorities and limitations of the Technical Representatives under the Contract. The Project Representative cannot grant a Technical Representative greater authority than the authority of the Project Representative.

2.1 INFORMATION SUPPLIED BY COUNTY

- A. Unless otherwise specifically provided in the Contract, surveys and site information provided by the County before the bid opening are intended to describe the general physical characteristics of the Site for the information of all bidders. The County does not represent that this information is complete or sufficient for the Contractor's performance of the Work. The Contractor shall lay out its Work from baselines and benchmarks indicated in the Contract and shall be responsible for the accuracy of all field measurements used in the lay out.
- B. The County shall furnish to the Contractor up to five copies of Contract Documents. The Contractor shall pay the County for any additional copies of Contract Documents. The Contractor shall keep at least one set of Contract Documents at the Site at all times for record notes and review by the County.
- C. All drawings, models, and specifications furnished by the County are solely for use on this Contract and are not to be used by the Contractor on any other work. The Contractor may retain one copy of the Contract Documents including the drawings, specifications and Work Orders.

2.2 WORK BY COUNTY OR SEPARATE CONTRACTORS

The County reserves the right to perform work not included in the Contract or to let other contracts in connection with this Project.

ARTICLE 3: CONTRACTOR

3.0 CONTRACTOR REPRESENTATIONS

The Contractor makes the following representations to the County:

- A. Before submission of its bid, the Contractor has: (1) carefully reviewed the Contract Documents (2) become familiar with the general and local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of Contract Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as other matters that may be encountered at the Site or affect performance of the Contract Work or the cost or difficulty thereof; (3) become familiar with and satisfied itself as to the conditions bearing upon transportation, disposal, handling, and storage of materials; and (4) become familiar with and satisfied itself as to the availability of labor, water, electric power, and roads; and the uncertainties of traffic, weather, river stages, tides, or similar physical conditions at the site. Any failure of the Contractor to take the action described in this provision or elsewhere in the Contract Documents will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the County;

- B. The unit prices and mark-ups set forth in the Form of Bid, Section 00300, are reasonable compensation for the Work, and the general conditions (including but not limited to weather, site, soil) known or reasonably anticipated for the Site;
- C. The Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform the Contractor's obligations required by the Contract;
- D. The Contractor is able to furnish plant, tools, material, supplies, equipment, and labor required to complete the Work and perform the obligations required by the Contract and has sufficient experience and competence to do so; and

3.1 GENERAL DUTIES

The Contractor shall give sufficient supervision to the Work, using its best skill and attention. The Contractor is hereby given notice that the County will be relying on the accuracy, competence and completeness of the Contractor's work. The Contractor shall supervise and be solely responsible for the proper performance of the Work in accordance with the Contract, including the construction means, methods, techniques, sequences, procedures, and for coordination of all portions of the Work. Unless specified elsewhere in the Contract, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction machinery, utilities, transportation, and other facilities and services (including federal and state tax, industrial insurance, social security liability and all other applicable taxes) necessary for the proper execution and completion of the Work. The Contractor shall also provide sufficient staffing and supervision to process Work Orders, Requests for Information, Requests for Amended Work Orders, Submittals, Change Orders, and to perform all other requirements of the Contract and all Work.

3.2 DUTY TO INSPECT DRAWINGS AND SPECIFICATIONS

The Contractor shall carefully study and compare all Contract drawings and specifications, and check the conditions, dimensions, and instructions as stated therein. The Contractor shall immediately notify the County of any errors, inconsistency, or omission which a reasonable contractor knew or should have discovered under the same and similar circumstances. The Contractor's failure to timely discover and immediately report such errors, inconsistency, or omissions to the County shall preclude the Contractor's recovery of costs and time resulting from the Contractor failure to timely discover and/or immediately notify the County of such errors, inconsistency, or omissions.

3.3 COMMUNICATIONS

To facilitate the orderly processing of Project information, communications between the County and the Subcontractor shall be made through the Contractor. Prior to the preconstruction meeting, the Contractor must designate, in writing, its representative who is responsible for administering the Contract. Communication with the Contractor shall be through this designated representative or Contractor's supervisory personnel who shall have full authority to obligate the Contractor and its resources.

3.4 CONTRACTOR'S SUPERVISION AND EMPLOYEES

- A. The Contractor shall provide qualified full-time supervisory personnel necessary to directly supervise the Work and administer the Contract. The Contractor's supervisory personnel shall have qualifications and experience satisfactory to the

County and in conformity with any special qualifications set forth in the Contract. The Contractor shall, at the County's request, provide sufficient documentation of the qualification and experience of all supervisory personnel. The County shall have the right to order the Contractor to replace any supervisory personnel that (1) do not have appropriate qualifications and experience to meet or (2) uphold the requirements of the Contract or demonstrates unprofessional behavior. Each supervisor shall have full authority to obligate and act for the Contractor and to receive directions and notices for the Contractor.

- B. The supervisory personnel shall not be changed except with the written notice to the County. The Contractor shall provide the County with written notice of any replaced supervisors. The County shall not be responsible for the acts or omissions of the supervisory personnel or their assistants.
- C. The Contractor shall at all times enforce good order among its employees and shall only employ persons skilled in the Work assigned to it. The County shall have the right to require the Contractor to remove Contractor's employees from the Site that do not have the appropriate qualifications and experience to meet or uphold the requirements of the Contract, or who demonstrate unprofessional behavior. Failure by the County to require removal of any Contractor personnel shall not be deemed an admission that any such personnel are satisfactory, nor shall such failure relieve the Contractor from any contractual responsibility.
- D. During performance of the Work the Contractor shall have supervisory personnel on-site and available to manage and administer the Contract.

3.5 CONTRACTOR'S DUTY WHEN COUNTY PERFORMS WORK ON-SITE

- A. The Contractor shall, without adjustment to the Contract Time or Contract Price, afford the County and other contractors reasonable opportunity for the use and storage of County or other contractors' materials and the execution of work at the Site. The Contractor shall coordinate its Work with theirs, and, at the County's request, participate in meetings for the purpose of coordinating the Contractor's construction schedule with those of other contractors. The Contractor shall not cut, excavate, alter, impair, or otherwise engage in work activity that inhibits the work of any other contractors without the prior written consent of the County.
- B. If any part of the Contractor's Work depends, for proper execution or results, upon the prior work of the County or any other contractor, the Contractor shall, before performing the affected Work, inspect and give prompt notice of any apparent discrepancies or defects in the prior work that renders it unsuitable for the reception of Contractor's Work. Contractor's failure to so inspect and to give such prompt notice shall constitute an acceptance of the prior work as fit for the reception of its Work, except as to defects not then reasonably discoverable.

3.6 MATERIALS AND EQUIPMENT FURNISHED BY COUNTY

- A. If the Contract requires that the Contractor install materials and equipment provided by the County, in the absence of a reasonably apparent defect, such materials and equipment shall be considered acceptable for the purpose intended. If the Contractor discovers defects in the County-furnished material or equipment the Contractor shall immediately notify the County in writing. After such discovery, the Contractor shall not proceed with Work involving such County materials and equipment unless otherwise authorized in writing by the County. Contractor's failure to provide immediate written notice of any defects in material or equipment shall constitute

acceptance of such materials and equipment as fit for incorporation into the Work. Contractor shall be responsible for any damages or delays resulting from Contractor's failure to provide timely written notice or Contractor's improper incorporation of such defective materials or equipment into the Work.

- B. Unless otherwise specifically provided in the Contract Documents, materials and equipment furnished by County, which are not of local origin, are considered to be "FOB" at the point of delivery which may be a railroad, truck or port terminal nearest to the Site. The County shall inspect the equipment at the point of delivery and notify the Contractor that the County-furnished material and equipment is available for immediate receipt, possession, and inspection, at the point of delivery. Upon such notice, the Contractor shall inspect such County-furnished material and equipment at point of delivery and, if required, provide prompt written rejection for the incorporation of said material and equipment into the Work. The Contractor shall specifically identify the causes for its rejection. Failure to provide such written rejection shall result in a presumption that the Contractor accepts and takes receipt of the County-furnished material and equipment. After receipt by the Contractor at the point of delivery, all risk of loss and damage to such materials and equipment shall be borne by the Contractor. The Contractor shall promptly unload, transport, store and/or protect such material and equipment from damage.

3.7 SUBCONTRACTORS

- A. This Contract is between King County and the Contractor. The Contractor will be responsible for the performance of all Work as required by the Contract. The Contract has not been written with the intent of, and King County shall not be a party to, defining the division of work between the Contractor and its Subcontractors.

- B. Selection of Subcontractors**

No Work shall be subcontracted without written consent of the County; provided, written consent shall not be required for Subcontractors identified by the Contractor as part of its bid to perform the Work under this Contract if King County did not object to such Subcontractors. If requested by the County, the Contractor shall provide documentation that the proposed Subcontractor is experienced and equipped to do the subcontract Work. The Subcontractor shall be properly licensed, registered or certified, as applicable, to perform the assigned work. The Contractor shall require each Subcontractor to comply with all provisions of this Contract. Consent to subcontract any portion of the Work shall not relieve the Contractor of any responsibility for performance of the Contract. The Contractor shall be responsible for all Work and material furnished, and no subcontract shall in any case release the Contractor of its obligations or liability under this Contract and the Performance and Payment Bond.

- C. Removal of Subcontractors**

If dissatisfied with any part of the subcontracted Work or a Subcontractor's performance of the Work, the County may request in writing that the Subcontractor be removed. The Contractor shall comply with this request at once, and shall not employ the Subcontractor for any further work under the Contract.

- D. Substitution of Subcontractor**

Contractor shall not substitute any Subcontractor without the County's prior written consent.

E. Relationship of Subcontractors

The Contractor's subcontracting shall create no contract between King County and the Subcontractor. Subcontractors are not intended or incidental third party beneficiaries to the Contract. The Subcontractor shall have no rights against King County by reason of its subcontract with the Contractor.

F. Responsibility for Work of Subcontractors

The Contractor shall be responsible for the acts and omissions of Subcontractors and their employees, whether or not the Subcontractors are accepted by the County. The Contractor shall also be responsible for the suitability of any materials, components, equipment or supplies furnished by a Subcontractor irrespective of whether such were designated or approved by the County.

3.8 SCHEDULE OF WORKING HOURS, OVERTIME, SHIFT AND TIDE WORK

- A. As specified in the Contract, the Contractor shall submit a schedule of working hours, including overtime, shift, and tide work, to the County for acceptance. This schedule shall comply with RCW 49.28 and all other Contract requirements.
- B. The schedule of working hours accepted by the County shall be the only schedule used by the Contractor during performance of Work in the Contract, unless amended to maintain Work progress.
- C. Any Work performed after regular working hours, or on Sundays or legal holidays, shall be performed without additional expense to the County, except as otherwise provided in the Contract Documents.

3.9 RECORD DOCUMENTS

- A. The Contractor shall keep a copy of the Contract Documents on the Site. The Contractor shall further keep at the Site an accurate, readable, and orderly record set of drawings and specifications, updated as the job progresses to show all approved changes, options, alternates, and all actual deviations from the original Contract Documents and/or Work Order. In addition, the drawings and specifications shall be marked to record all materials used where options and alternates were indicated, specified and/or authorized. The record set shall be maintained in hard copy and at the County's option, in a computer format meeting the County's requirements. Accurate measurements referenced to two permanent structures shall be recorded to show the exact location and changes in direction of all underground services and utilities, as well as their approximate depth below finished grade. The Contractor shall update the Record Documents with information about each item of capital equipment or other fixed asset installed, including type of equipment, make, model, serial number, and acquisition cost. The Contractor shall also update the Record Drawings identifying each item of capital equipment or other fixed asset removed from the Project, including type of equipment or fixed asset, make, model, serial number and description of location from which it was removed.
- B. The record set of documents shall be kept up-to-date and be available for review by the County at all times, including but not limited to at each job progress meeting. Failure to have the record set up-to-date shall be sufficient reason for the County to withhold payment in accordance with provision 7.2, *Payments Withheld*, until all such information is recorded.

- C. Record set drawings may be used to assist the County to verify the appropriate progress payment.

3.10 COST RECORDS

- A. The Contractor and Subcontractors shall maintain Project cost records by cost codes and shall segregate and separately record at the time incurred all costs (1) directly associated with each Work Order and (2) directly or indirectly resulting from any event or condition, for which the Contractor seeks an amendment to a Work Order. Any costs claimed to result from any such event or condition, including, but not limited to, delay and impact costs, acceleration costs, loss of productivity or efficiency, and increased or extended overhead, shall be recorded at the time incurred and be fairly and reasonably allocated to each such event or condition and to other causes of such costs. The County shall be provided with a detailed description of all such costs and the basis of allocation. At the County's request the Contractor and Subcontractors shall provide summary of all costs and shall make all underlying cost records and monthly summary of costs available for review, inspection, and copying by the County upon request.
- B. In addition to the requirements set forth in Articles 5, *Changes to the Contract*, and 6, *Time and Price Adjustments*, the Contractor shall only be entitled to extra compensation for an event or condition only to the extent that the Project cost records are kept in full compliance with all Contract requirements and the cost allocations support entitlement to such compensation.

3.11 MAINTENANCE AND INSPECTIONS OF DOCUMENTS

- A. All Contractor's documents and records relating to the Contract, shall be open to inspection, audit, and/or copying by the County or its designee during the Contract Time and for a period of not less than six years after the date of Final Acceptance of the Contract ("Preservation Period"). The Contractor shall also guarantee that all Subcontractor documents shall be retained and open to similar inspection, audit and/or copying during the Contract Time and also the Preservation Period. Inspection, audit, and/or copying of all documents described herein, may be performed by the County or its designee at any time with not less than 5 days notice. The Contractor and Subcontractors shall provide adequate facilities, acceptable to the County, for inspection, auditing, and/or copying during the normal business hours. The Contractor and Subcontractors shall use its best efforts to cooperate with the inspection, auditing, and/or copying. If an audit or inspection is to be commenced more than 60 days after the Final Acceptance date of the Contract, the Contractor will be given 20 days notice of the time when the audit or inspection is to begin. If any litigation, Claim, or audit arising out of, in connection with, or related to this Contract is initiated, all documents shall be retained until such litigation, Claim, or audit involving the records is completed or for the Preservation Period, whichever occurs later. If the Contractor is formally dissolved, assigns or otherwise divests itself of its legal capacity under this Contract during the Preservation Period, then it shall immediately notify the County and preserve such records, at its expense, as directed by the County.
- B. The Contractor and Subcontractors shall be subject to audit at any time with respect to this Contract. Failure of the Contractor or Subcontractors to maintain and retain sufficient records to allow the County to verify all costs or damages or failure to permit the County access to the books and records of the Contractor and Subcontractors shall constitute a waiver of the Contractor's right or Subcontractors'

rights, to Claim or be compensated for any additional time or money under this Contract.

- C. At a minimum, the following documents shall be available for inspection, audits, and/or copying:
1. Daily time sheets and all daily and inspection reports;
 2. Collective Bargaining Agreements;
 3. Insurance, welfare, and benefits records;
 4. Payroll registers;
 5. Earnings records;
 6. All tax forms, including Payroll taxes;
 7. Material invoices and requisitions;
 8. Material cost distribution worksheet;
 9. Equipment records (list of Contractor's and Subcontractor's equipment, rates, etc.);
 10. Contracts, purchase orders and agreements between the Contractor and each Subcontractors;
 11. Subcontractors' payment certificates;
 12. Correspondence between Contractor and Subcontractors;
 13. All meeting notes by and between Contractor, Subcontractors, and any third parties related to the Project;
 14. Canceled checks (payroll and vendors);
 15. Job cost reports, including monthly totals;
 16. Job payroll ledger;
 17. Certified payrolls;
 18. General ledger;
 19. Cash disbursements journal;
 20. Escrow bid documents (if applicable);
 21. Financial statements for all years during the Contract Time. In addition, the County may require, if it deems appropriate, additional financial statements for 3 years preceding execution of the Contract and 6 years following Final Acceptance of the Contract;
 22. Depreciation records on all Contractor's and Subcontractor's equipment whether these records are maintained by the Contractor and Subcontractors involved, its accountant, or others;
 23. If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
 24. All documents which relate to each and every Claim together with all documents which support the amount of damages as to each Claim;

- 25. Worksheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish time periods, individuals involved, the hours for the individuals, and the rates for the individuals;
 - 26. Worksheets, software, and all other documents used by the Contractor to prepare its bid and schedule(s);
 - 27. All schedule documents, including electronic versions, planned resource codes, or schedules and summaries;
 - 28. All submittals; and,
 - 29. All other documents related to the Project, Claims, or Change Orders.
- D. The Contractor shall mark any documentation it considers proprietary or confidential accordingly. Such information will be treated as such by King County; however, the County cannot insure that this information would not be subject to release pursuant to a public disclosure request. In the event the County receives a request for such information, the County will immediately advise the Contractor and will not release requested information for a period of not less than ten days in order to give the Contractor an opportunity to obtain a court order prohibiting the release of the information in response to the public disclosure request.

3.12 MAINTENANCE AND SITE CLEANUP

- A. The Contractor shall at all times keep the Site, access points, and public rights-of-way free from accumulation of dirt, mud, waste materials or rubbish caused by the Contractor or Subcontractors. At the completion of the Contract Work, the Contractor shall remove and lawfully dispose of all its dirt, mud, waste materials, rubbish, tools, scaffolding and surplus or partly used materials from the Site and shall leave the Site broom clean unless some stricter standard is specified in the Contract.
- B. The Contractor shall obey all applicable laws and regulations relating to the storage, use, and disposal of Hazardous Materials. The Contractor shall promptly notify the County of all Contractor or Subcontractor caused spills or releases of Hazardous Materials, and pay the cost to promptly clean up all such spills or releases and any associated fines or penalties. The Contractor shall maintain documentation of the clean up and disposal all Contractor or Subcontractor caused spills or releases of Hazardous Materials.
- C. In case of a dispute over clean up, the County may, after written notice to the Contractor, sweep surfaces or remove the dirt, mud, waste materials, rubbish, or hazardous materials and charge all reasonable costs of such work to the Contractor. The County may charge the Contractor or deduct such costs from payments otherwise due the Contractor pending a resolution of the dispute or exercise its rights under the Performance or Payment Bond.

3.13 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES, AND IMPROVEMENTS

Contractor shall protect from damage all existing structures, equipment, improvements, utilities, trees, and vegetation not shown in the Contract Documents to be removed or modified at or near the Site. Contractor shall repair, at no cost to the County, any such damage resulting from failure to comply with the requirements of the Contract or failure

to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, County may have the necessary work performed and deduct or charge the cost to Contractor or exercises its rights under the Performance or Payment Bond.

3.14 PERMITS, LAWS AND REGULATIONS

- A. Except those permits, easements, and variances specified in the Contract as having been previously obtained by the County, all permits and licenses including, but not limited to, easements and variances necessary for the execution of the Work shall be secured and paid for by the Contractor. The Contractor shall identify and apply for such permits and licenses at the earliest possible time so as to avoid any delay to the Contract Work arising from the permitting and/or licensing process. No actions taken by the County to aid the Contractor in securing any permit or license shall relieve the Contractor of any obligations to secure any such permit or license.
- B. The Contractor shall also maintain all stamped permit sets of documents at the Site during construction, in good condition and as required by local ordinances.
- C. The Contractor shall perform all work hereunder in full compliance with local, state and federal laws, ordinances, resolutions and regulations, and with permit, license, easement, and variance conditions pertaining to the conduct of the Work. The Contractor shall defend, indemnify, and hold the County harmless from any assessment of fines, penalties, or damages arising from violations of the same by the Contractor or Subcontractors. The Contractor shall pay and provide proof of payment for any assessments of fines, penalties or damages. The Contractor shall cooperate with all governmental entities regarding inspection of the Work and compliance with such requirements.
- D. If the Contractor discovers that the drawings, specifications or other portions of the Contract Documents are in conflict with any local, state, and federal laws, King County resolutions, regulations and/or permit, license, and easement conditions, the Contractor shall promptly notify the County in writing of such conflict and await resolution of the conflict. If the Contractor proceeds with the work in question without resolution from the County, the Contractor shall be solely liable for any costs, fines, penalties or damages that accrue, including the costs for remedial work required to meet the law or condition.
- E. The following is a partial list of applicable laws and regulations which is provided to the Contractor for information only and shall not relieve the Contractor from its duty to ascertain and comply with all applicable laws and regulations:
 - 1. **Hours of Labor.** See Chapter 49.28 RCW.
 - 2. **Wages of Employees.** See Chapters 39.12 and 49.28 RCW. In the event rates of wages and benefits change while this Contract is in force, the Contractor shall bear the cost of such changes and shall have no claim against the County on account of such changes. The state schedule of prevailing wage rates or federal prevailing wages as applicable to this Contract is incorporated herein and shall be attached to this Contract.
 - 3. **Worker's Benefits.** See Title 51 RCW & Title 50 RCW.
 - 4. **Temporary Water Pollution Control.** The Contractor shall comply with the latest revision of Provision 1-07.15 of the Washington State Department of Transportation Standard Specifications for Road, Bridge and Municipal

Construction and King County Code 9.02, which pertain to control of waterborne sand, silt, clay and oil caused by construction activities. The more stringent of the two above-referenced requirements shall govern if there is a conflict between the two.

5. **Taxes.** The Contractor is required to pay all applicable taxes. No adjustment will be made in the amount to be paid by the County under the Contract because of any change in law or regulations covering any applicable taxes, or because of any misunderstanding by the Contractor as to its liability for or the amount of any taxes.

3.15 PATENTS AND ROYALTIES

- A. The costs or fees relating to royalties or claims for any patented invention, article, process or method that may be used upon or in a manner connected with the Work under this Contract or with the use of completed Work by the County shall be paid by the Contractor. The Contractor and its sureties shall protect and hold King County, and its officers, agents and employees, harmless against any and all demands made for such fees or claims brought or made by or on behalf of the holder of any invention or patent. Before final payment is made on the account of this Contract, the Contractor shall, if requested by the County, furnish acceptable proof of a proper release from all such fees or claims.
- B. Should the Contractor, its agent, representatives or employees, or any of them, be enjoined from furnishing or using any invention, article, material or appliances supplied or required to be supplied or used under the Contract, the Contractor shall promptly notify the County of the Contractor's intent to substitute other articles, materials or appliances in lieu thereof which are of equal efficiency, quality, finish, suitability, and market value, and satisfactory in all respects to the County. In the event the County elects, in lieu of such substitution, to have supplied and to retain and use any such invention, article, material or appliances as may be required to be supplied by the Contract, the Contractor shall pay all royalties and secure such valid licenses as may be requisite and necessary for the County, its officers, agents, representatives and employees, or any of them to use such invention, article, material or appliance without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should the Contractor neglect or refuse to make the substitution promptly or to pay such royalties and secure such licenses as may be necessary, then in that event the County shall have the right to make such substitution or the County may pay such royalties and secure such licenses and charge the Contractor, even though final payment under the Contract may have been made.

3.16 CONTRACTOR'S CERTIFICATION

A. Conflict of Interest

Consistent with the King County Code of Ethics, Chapter 3.04, the Contractor certifies (and shall require each Subcontractor to certify) that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the work, services or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest. In the event that the Contractor or its agents, employees or representatives acquires such a conflict of interest, the Contractor shall immediately disclose such interest to King County and

take action immediately to eliminate the conflict or to withdraw from this Contract, as King County may require.

B. Contingent Fees and Gratuities

The Contractor, by entering into this Contract with the County to perform or provide work, services or materials, has thereby covenanted:

1. That no person or selling agency except bona fide employees or designated agents or representatives of the Contractor has been or will be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee may be paid; and,
2. That no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by the Contractor or any of its agents, employees or representatives, to any official member or employee of King County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending thereof, or the making of any determination with respect to the performance of this Contract. The Contractor certifies that it has not made any contributions to any person or entity as a condition of doing business with the County and it has disclosed to the County all attempts by any person to solicit such payments.

C. Penalties

Contractors are advised that KCC 3.04.060 authorizes criminal liability, and civil penalties, including the cancellation of current contracts and disqualification from bidding for a two-year period, for any person who violates Chapter 3.04 KCC.

3.17 COUNTY – CONTRACTOR COORDINATION: DEVIATION FROM CONTRACT

The Contractor shall not make an alteration, variation, addition, deviation, or omission from the requirements of the Contract without the written consent of the County. Unless such written consent expressly so provides, any such alteration, variation, addition, deviation, or omission by the Contractor shall not result in any extra compensation or extension of time and may result in a deduction. The County shall have the right to treat any such alteration, variation, addition, deviation, or omission from the requirements of the Contract as a contract breach, which may be justification for the County to withhold payment, stop work, or terminate the Contract for default.

3.18 OPERATIONS, MATERIAL HANDLING, AND STORAGE AREAS

A. Operating Area

Contractor shall confine all operations, including storage of materials on the Site, to County-approved areas.

B. Temporary Buildings and Utilities

Temporary buildings (including storage sheds, shops, offices) and utilities may be erected by Contractor on the Site only with the consent of the County and without expense to the County. The temporary buildings and utilities shall remain the property of Contractor and shall be removed by the Contractor at its expense upon completion of the Work.

C. Use of Roadways

The Contractor shall use only established roadways or temporary roadways authorized by the County. When materials are transported during prosecution of the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by federal, state, or local law or regulation.

D. Disposal/Removal of Materials

The Contractor shall be responsible for compliance with all laws governing the storage and ultimate disposal of all such materials and components. The Contractor shall provide the County with a copy of all manifests and receipts evidencing proper disposal when required by the County or applicable law.

E. Protection and Care of Contractor's Materials and Equipment

The Contractor shall be responsible for the proper care and protection of its materials and equipment delivered to the Site. Materials and equipment may be stored on the Site at the Contractor's own risk and with prior written approval from the County. When the Contractor uses any portion of the Site as a shop, the Contractor shall be responsible for any repairs, patching, or cleaning arising from such use and for obtaining any necessary permits to establish such shop or temporary storage facilities.

3.19 CONTRACTOR'S OVERALL RESPONSIBILITY FOR PROTECTION OF WORK, PROPERTY, AND PERSONS

- A. The Contractor shall be solely and completely responsible for conditions of the Site, including safety of all persons and property, during performance of the Work. The Contractor shall maintain the Site and perform the Work in a manner which meets all statutory and common law requirements or other specific contractual requirements for the provision of a safe place to work and which adequately protects the safety of all persons and property on or near the Site. This obligation shall apply continuously and shall not be limited to normal working hours. The County's inspection of the Work or presence at the Site does not and shall not be construed to include review of the adequacy of the Contractor's safety measures in, on or near the site of the Work.
- B. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including adequate safety training, in connection with the Work. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.
- C. Unless otherwise agreed, the Contractor shall protect and be responsible for any damage or loss to the Work, or to the materials and equipment associated with the Work until the date of Final Acceptance. The Contractor shall also be solely and completely responsible for damages arising from the Work that affect property adjacent to the Site. The Contractor shall repair or replace without cost to the County any damage or loss that may occur, except damages or loss caused by the acts or omissions of the County. The Contractor shall erect and maintain adequate signs, fencing, barricades, lights or security measures and persons to protect the Work until Final Acceptance, except for those portions of Work accepted by a Certificate of Substantial Completion.

3.20 PROTECTION OF PERSONS

- A. The Contractor shall take all reasonable precautions for the safety of all employees working on this Contract and all other persons who may be affected by such Work. The Contractor shall designate a responsible member of its organization at the Site whose duty shall be to manage and coordinate the safety programs and to prevent accidents of the Contractor and Subcontractors.
- B. Except as otherwise stated in the Contract, if the Contractor encounters, on the Site, material reasonably believed to be Hazardous Material including but not limited to asbestos, lead, or polychlorinated biphenyl (PCB), that Contractor shall immediately stop work in the area affected and give notice of the condition to the County. Work in the affected area shall not be resumed without written direction by the County.
- C. The Contractor shall maintain in a reasonable number of conspicuous and accessible places at the Site all materials necessary for giving first aid to the injured. The Contractor shall establish, publish and make known to all employees procedures for ensuring immediate removal to a hospital or a doctor's care, of persons who may have been injured on the Site. Employees shall not be permitted to work on the Site before the Contractor has: (1) provided all materials necessary for giving first aid at the Site; and, (2) established and made known procedures for removal of injured persons to a hospital or doctor's care. The Contractor shall ensure that at least one of its employees on site has adequate training in first aid.
- D. In order to protect the lives and health of persons performing work under this Contract, the Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions, amendments and regulations issued thereunder, and the provisions of the Washington Industrial Safety Act of 1973 (WISHA), including all revisions, amendments and regulations issued thereunder by the Washington State Department of Labor and Industries. The WISHA regulations shall apply, without limitation, to all excavation, tunneling, trenching and ditching operations. In case of conflict between any such requirements, the more stringent regulation or requirement shall apply. There is no acceptable deviation from these safety requirements, regardless of practice in the construction industry. Any violation of OSHA, WISHA or other safety requirements applicable to the work may be considered a breach of this Contract.

3.21 SAFETY PROGRAM

- A. If otherwise required elsewhere in the Contract Documents, the Contractor shall prepare and provide to the County a written site specific "Safety Program" demonstrating the methods by which all applicable safety requirements of this Contract will be met. The Contractor shall ensure its Subcontractors have a written "Safety Program" or formally adopt the Contractor's site specific "Safety Program." The Contractor shall designate a Safety Officer who shall be responsible for proper implementation of the "Safety Program." The Contractor shall submit a copy of its "Safety Program" and the Subcontractor's "Safety Program" to the County within 14 days after the Contractor signs the Contract. The County's review of such Programs shall not be deemed to constitute approval or acceptance thereof and shall not relieve or diminish the Contractor's sole responsibility for Site safety.
- B. The Contractor shall conduct a weekly safety audit meeting with all Subcontractors and others on the Site performing Work hereunder to discuss general and specific safety matters. The Contractor shall provide upon request, notice of each meeting to the County. At the County's request the Contractor shall provide the County with a

record of each meeting, including a sheet on which each attendee signed in and a list of the matters discussed.

3.22 CONTRACTOR'S PROPERTY

The Contractor's tools and equipment and building materials to be incorporated into the Project may be stored on the Site but all such storage shall be subject to the requirements of the Contract. Any repairs, patching or cleaning of the Site that may be necessary to restore the Site to its previous condition due to storage of the Contractor's materials, tools or equipment, or other aspects of the Contractor's Work, shall be the responsibility of the Contractor.

3.23 ARCHAEOLOGICAL AND HISTORICAL PRESERVATION

The Contractor shall comply fully with the requirements set forth in Chapter 27.53 RCW entitled Archaeological Sites and Resources. The Contractor shall immediately notify the Project Representative if any artifacts, skeletal remains or other archaeological resources (as defined under RCW 27.53.040 now and as hereinafter amended) are unearthed during excavation or otherwise discovered on the site of the work. If directed by the Project Representative, the Contractor shall immediately suspend any construction activity which, in the opinion of the Project Representative, would be in violation of Chapter 27.53 RCW. The suspension of Work shall remain in effect until permission to proceed has been obtained by the Project Representative from the State Historic Preservation Officer or private landowner, as applicable.

3.24 WATER POLLUTION CONTROL REQUIREMENTS

The Contractor shall comply with and be liable for all penalties, damages and violations under Chapter 90.48 RCW in the performance of this work. By submitting a bid for and entering into this Contract, the Contractor has thereby assured King County that the Contractor has knowledge of, understands and will comply with the provisions and requirements of Chapter 90.48 RCW, including any regulations issued pursuant thereto. The Contractor shall also perform its work in compliance with water pollution control requirements as may be set forth in this Contract and as may be a part of any permit or other authorization issued or obtained for this Contract.

3.25 RIGHTS OF WAY

A. All rights of way to be provided by King County for use by the Contractor and for the completed work shall be set forth in the Specifications and may be shown on the Drawings. The Contractor's construction activities shall be confined within the identified rights of way, unless the Contractor makes arrangements for use of additional public and/or private property and complies with the requirements of this provision 3.25, *Rights of Way*. The Contractor shall comply with all requirements set forth in such rights of way documents and in the Contract applicable to the performance of work hereunder. The Contractor shall provide written notice to the Project Representative of the dates of commencement and completion of work on each right of way provided by King County. If the Contractor fails to diligently prosecute and complete the work on each such right of way and, as a result of such failure, King County becomes obligated to pay additional amounts for the use of such right of way, the Contractor shall be charged such additional costs which shall be set off against any amounts owing to the Contractor or entitle the County to a reimbursement from the Contractor. Upon completion of use of each right of way, the Contractor shall provide the Project Representative with a written release signed by

the landowner, or authorized agent therefor, stating that the landowner has no claims whatsoever against King County on account of the Contractor's use of such right of way. Such release shall be on the form set forth in the Specifications.

- B. If the Contractor makes arrangements for use of such additional public and/or private property, the Contractor, prior to using such property, shall provide the Project Representative with written permission of the landowner, or duly authorized agent of such landowner, for such use. Upon completion of use of such property, the Contractor shall provide the Project Representative with a written release signed by such landowner or authorized agent therefor stating that the owner has no claims whatsoever against King County on account of the Contractor's use of such property. Such release shall be on the form set forth in the Specifications.
- C. The Contractor shall save King County harmless from all suits and legal proceedings of every kind and description that might result from use of or damage to rights of way and public and/or private property by the Contractor. The Contractor shall comply with all laws, rules, regulations, ordinances, resolutions or directives relating to its use of public rights or way, streets or highways; and its use of same shall not disturb the rights and property of adjacent landowners.

3.26 ENVIRONMENTAL MITIGATION PLAN

If required elsewhere in the Contract Documents, the Contractor shall prepare and submit to the Project Representative a plan by which the Contractor and its Subcontractors shall ensure all environmental mitigation requirements shall be complied with during performance of the work under this Contract. The plan shall specifically address each such requirement. Failure to submit a complete environmental mitigation plan may result in suspension of work; delays, if any, resulting therefrom shall be considered caused by the acts of the Contractor, and any time delays or additional costs resulting therefrom shall be borne by the Contractor. Preparation of such a plan and compliance with all environmental mitigation requirements shall be deemed incidental to the work under this Contract and all costs therefor shall be included in the Contract Price.

ARTICLE 4: ADMINISTRATION OF THE CONTRACT

4.0 TIME OF ESSENCE

All time requirements set forth in the Contract Documents are of the essence.

4.1 WORK PROGRESS

The Contractor shall be required to:

1. Prosecute the Work diligently with adequate forces;
2. Plan, coordinate, and layout the Work in advance so as to avoid delay;
3. Timely complete each Work Order; and,
4. Complete all Contract close out requirements in accordance with all applicable Contract requirements within the time period established by the County in the Certificate of Substantial Completion.

4.2 SCHEDULE OF VALUES

- A. Only upon the request of the County, the Contractor shall submit to the County at the time specified in the Contract a detailed Schedule of Values which identifies the

various activities of the Contract Work and their values and quantities, including the overhead and profit for each activity. The Contractor warrants that the values identified in its Schedule of Values accurately reflect the value of each work activity. The Schedule of Values shall be used as a basis for calculating all Progress Payments. Payment for Contract Work shall be made only for and in accordance with those activities identified in the Schedule of Values.

- B. If a Schedule of Values is requested, the Contractor shall not be entitled to, nor shall the County be required to make, payment for any Contract Work until the Schedule of Values has been accepted by the County. Such acceptance shall not be unreasonably withheld.
- C. The County shall review and accept the Schedule of Values or provide the Contractor with a written explanation of why the Schedule of Values was not acceptable. The County shall use reasonable efforts to review the Schedule of Values within 30 days of the County's receipt of the Contractor's submittal of its Schedule of Values. The County's acceptance of the Schedule of Values shall not relieve the Contractor from its sole responsibility for the accuracy of the Schedule of Values and its compliance with all Contract requirements. The Contractor shall revise the Schedule of Values as necessary to accurately reflect Change Orders.
- D. Each Application For Payment shall include a current status of the Schedule of Values. No Application For Payment will be considered until the current status of the Schedule of Values has been submitted and accepted.
- E. The activities which the Contractor identifies within its Schedule of Values shall be specifically referenced within, and conform and be consistent with the activities set forth within the Project Schedule.

4.3 PROJECT SCHEDULE

- A. Each Work Order may have a Work Order Schedule. At the County's request, the Contractor shall submit a Work Order Schedule as part of the Work Order negotiation. The Schedule in hard copy and/or electronic format as required by the Contract. The schedule shall show the sequence in which the Contractor proposes to perform the Work, indicate the critical path, identify the dates on which the Contractor proposes to start and finish the scheduled activities of the Work Order indicate completion within the Work Order Time, and meet all the requirements as maybe set forth more particularly in the Technical Specifications.
- B. The Work Order Schedule shall be prepared in the format as specified by the Project Representative.
- C. Within 7 days of the County's receipt of the Contractor's submittal of its Work Order Schedule or unless stated elsewhere in the Contract, the County shall review the Work Order Schedule and provide the Contractor with written comments. The County will review the Work Order Schedule only to determine whether the Schedule meets the requirements established by the Project Representative. To the extent the Work Order Schedule does not meet such requirements, the Contractor shall revise the Schedule to make it compliant.
- D. By reviewing the Schedule and providing written comments, the County is not approving or adopting the Contractor's plan, schedule, means, methods, techniques, sequences, or procedures required to perform the Work. Review and comment by the County of the Schedule shall not relieve the Contractor from the sole

responsibility for the accuracy of a Work Order Schedule, and its compliance with all Contract requirements, and its responsibility to meet all required Work Order completion dates. Failure by the County to indicate items on the Schedule that do not conform with the requirements shall not alter or waive the requirements or relieve the Contractor from complying with all Contract requirements.

- E. If a Work Order Schedule is requested by the County, the Contractor shall not be entitled to, nor shall the County be required to make payment for that Work Order until the Schedule complies with all requirements.
- F. The Contractor shall schedule the Work so that the Work Order is completed on time. If the Contractor attempts to perform the Work in less than the Work Order Time no additional compensation for any delays attributable to the County or any acceleration will be owed to the Contractor if the Contractor fails to achieve the earlier completion date.
- G. If a Work Order Schedule is required, the Contractor shall regularly enter the actual progress of the Work and Work Order Time extensions approved by the County on the Work Order's Schedule. Updated Schedules shall reflect actual progress and completion within the Work Order Time and shall be provided to the County with each Application for Payment in hard copy and/or electronic format as required by the Project Representative. Applications for Progress Payments will not be considered by the County and the Contractor will not be paid until the Contractor complies with these requirements. The updated Project Schedule shall be used to assist the County in verifying the appropriate payment.
- H. If, in the opinion of the County, the Contractor falls behind in its progress of the Work due to acts or omissions of the Contractor or its Subcontractors, the Contractor shall take all necessary steps to improve its progress and bring its progress back in-line with the accepted Work Order Schedule, without additional cost to the County. In this circumstance the Contractor shall, as necessary, increase the number of shifts, overtime operations, and/or days of work, both on and off the Site, and submit for acceptance any supplementary schedule or schedules as the County deems necessary to demonstrate how the accepted rate of progress will be regained. Failure of the Contractor to comply with the requirements under these provisions shall be grounds for a determination by the County that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the County may pursue any right it has under the law or the Contract, including but not limited to default termination.

4.4 SUBMITTALS

- A. Submittals include shop drawings, setting and erection drawings, schedules of materials, product data, samples, certificates and other information prepared for the Work by the Contractor or a Subcontractor as set forth in the Technical Specifications or particular Work Order ("Submittals"). The Contractor shall perform no portion of the Work requiring Submittals until the Submittals have been reviewed and returned by the County with no exceptions taken.
- B. Prior to furnishing the Submittals to the County, the Contractor shall: (1) review all Contractor and Subcontractor Submittals for accuracy, completeness, and compliance with the Contract; (2) coordinate all Submittals with all Contract Work by other trades and with field measurements; and (3) indicate approval on the

Submittals as a representation that it has complied with its obligation to review and coordinate Submittals. Where required by law or by the Contract, Submittals shall be stamped by an appropriate licensed professional. Submittals lacking required stamps or evidence of Contractor review and approval will be returned without review by the County for resubmission. Submittals shall be sequentially numbered.

- C. When submitting information, the Contractor shall identify and state reasons for any alteration, variation, addition, deviation, or omission from the Contract. The Contractor shall not perform work that alters, varies, adds, deviates, or omits Work without prior specific written acceptance by the County.
- D. The Contractor shall provide Submittals with reasonable promptness and in such sequence as to facilitate the timely completion of the Contract. The Contractor shall prepare and keep current, for review by the County, a schedule of Submittals which is coordinated with the Contractor's Project Schedule and allows the County reasonable time for review.
- E. The County shall review the Contractor's Submittals and respond in writing with reasonable promptness. Unless otherwise agreed, no delay to the Contractor's Work shall be attributable to the failure by the County to respond to a Submittal until thirty days after the Submittal is received by the County, and then only if failure by the County to respond is unreasonable and affects the Contract completion date.
- F. If the Contractor is required to resubmit a Submittal, any revisions on resubmittals, shall be specifically identified in writing and the resubmitted Submittal shall be sequentially alpha denoted and note revisions in numerical order. The cost of the review of the initial Submittal and the first revised submittal shall be borne by the County. The costs of all additional revised Submittals shall be charged to the Contractor. The cost of review shall include, without limitation, administrative, design, and engineering activities directly related to review of Submittals. The County may deduct these costs from any amounts due the Contractor.
- G. The County shall review the Contractor's Submittals only for conformance with the design of the Work and compliance with the Contract. Review of the Submittals are not conducted to verify the accuracy of dimensions, quantities, or calculations, the performance of materials, systems, or equipment, or construction means, methods, techniques, sequences, or procedures, all of which remain the Contractor's responsibility. Failure by the County to take exception to a Submittal shall not relieve the Contractor from any duty, including its responsibility for errors or omissions in Submittals, its duty to make Submittals and duty to perform the Work according to the requirements of the Contract. The County's review of a Submittal shall not alter or waive the requirements of the Contract unless the County has issued prior written approval of such change or alteration of the Contract requirements.
- H. The Contractor's failure to identify any error, deviation, or omission and subsequent acceptance of the Submittal by the County shall not relieve the Contractor from complying with the Contract requirements.

4.5 REQUESTS FOR INFORMATION

- A. If the Contractor determines that some portion of the drawings, specifications or other Contract Documents require clarification or interpretation by the County because of an apparent error, inconsistency, omission, or lack of clarity in the Contract, the Contractor shall promptly submit a Request For Information ("RFI") and, unless otherwise directed, shall not proceed with the affected Work until the

County has responded to the RFI. The Contractor shall plan its work in an efficient manner so as to allow for timely responses to RFIs.

- B. RFIs shall only be submitted by the Contractor on a RFI Form provided by the County or in a form acceptable to the County. The Contractor shall clearly and concisely set forth the issue for which clarification or interpretation is sought and why a response is needed by the County. In the RFI the Contractor shall set forth its own interpretation or understanding of the requirement along with reasons why it reached such an understanding.
- C. The County will review RFIs to determine whether they meet the requirements to qualify as an RFI. If the County determines that the document is not an RFI it will be returned to the Contractor, unreviewed as to content. When appropriate the Contractor may resubmit the RFI on the proper form, with all required information and in the proper manner.
- D. The County shall respond in writing with reasonable promptness to Contractor's RFI. If the Contractor submits a RFI on an activity less than 10 days prior to the commencement of that activity, the Contractor shall not be entitled to any time extension or adjustment in Work Order Price due to the time it takes the County to respond to the RFI provided that the County responds within 10 days. No delay to the Contractor's work or damages to the Contractor shall be attributable to the failure by the County to respond to the RFI until 10 days after the County's receipt of the RFI, and then only if the failure by the County to respond is unreasonable and affects the Work Order completion date.
- E. The County's response to a RFI shall not be considered a change to the Contract requirements. To the extent the Contractor believes that the County's response to the RFI constitutes changed work impacting Work Order Time or Work Order Price, the Contractor shall submit a request to amend the Work Order to the Project Representative. If it is denied, the Contractor shall file a claim in accordance with provision 5.3, *Contractor Claims*.

4.6 TESTS, INSPECTIONS, AND ACCESS TO THE WORK

- A. The Contractor shall document and maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract. The Contractor shall maintain all documentation related to testing and inspection and make such documentation available to the County at its request. Contractor shall be responsible for inspection and quality assurance of all its Work and all Work performed by any Subcontractor. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to County, or with the appropriate public authority. If any governmental, regulatory, or permitting authority requires any portion of the Work to be inspected, tested, or approved, the Contractor shall make all arrangements for and cooperate with such inspections, tests, and approvals so as not to delay completion of the Contract Work. The Contractor shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the County at least three (3) working days notice of: (1) when the work is ready to be tested and inspected and (2) when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to County upon request.

- B. The Contractor shall cooperate with the County in the performance of any tests and inspections of the Work. The Contractor has the duty to coordinate all tests and inspections in a manner which does not negatively impact Contractor's compliance with the Contract.
- C. If any Work required to be inspected, tested, or approved is covered without such inspection, testing or approval being obtained, it must, if requested by the County, be uncovered for observation, and such uncovering shall be at Contractor's expense.
- D. Upon request by the County, any Work not otherwise required to be inspected or tested shall be uncovered by the Contractor. If the Work is found to comply with the Contract or if any non-compliance was not caused by the Contractor or a Subcontractor, the County will pay the costs of testing and inspection and the costs associated with the uncovering and recovering of the Work, otherwise the Contractor shall bear such costs as well as all costs of correction.
- E. County may, at any reasonable time and at its own cost, conduct inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract. County shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract. The County inspection and tests are for the sole benefit of the County and do not:
 - 1. Constitute or imply acceptance;
 - 2. Relieve Contractor of responsibility for providing adequate quality control measures;
 - 3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
 - 4. Relieve Contractor of its responsibility to comply with the requirements of the Contract; or,
 - 5. Impair County's right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled.
- F. Neither observations by an inspector retained by County, the presence or absence of such inspector on the Site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract. Inspectors are not authorized to change any term or condition of the Contract.
- G. Contractor shall promptly furnish, without additional charge, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by County. County may charge Contractor any additional cost of inspection or testing when Work is not ready at the time specified by Contractor for inspection or testing, or when prior rejection makes reinspection or retest necessary. County shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

4.7 CORRECTION OF WORK OR DAMAGED PROPERTY

- A. If the County determines that material, equipment, workmanship, or Work proposed for, or incorporated into the Work, does not meet the Contract requirements or fails to perform satisfactorily, the County shall have the right to reject such Work by giving the Contractor written notice that such Work is either defective or non-conforming. The County, at its option, shall require the Contractor, within a designated time period as set forth by the County, to either (1) promptly repair, replace or correct all

Work not performed in accordance with the Contract at no cost to the County or, (2) provide a suitable corrective action plan at no cost to the County and once accepted by the County, the Contractor shall implement the corrective action plan at no cost to the County. If the corrective action plan as accepted by the County does not remedy the defective or non-conforming Work, the Contractor shall remain responsible for remedying of the defective or non-conforming Work to the County's satisfaction and at no additional cost to the County. The Contractor shall also be responsible to repair all property and work damaged by the Contractor at no cost to the County. Under no circumstances shall the Contractor be entitled to additional time or money for the correction of defective or non-conforming work, or for the repair of damaged property.

- B. If the Contractor does not repair, replace or correct and/or remove rejected Work or repair damaged property as required by the County, the County or County's designee may repair, replace or correct and/or remove it and deduct the cost of such effort from any payment due the Contractor. Under this provision, the County reserves the right to make use of the Contractor's plant and equipment for this repair, replacement, correction or removed Work. If the remaining payments due the Contractor are not sufficient to cover the County's cost of remedying the rejected work, the Contractor shall pay the difference to the County.
- C. The County may elect to retain work if the County determines that such defective or non-conforming work is not of sufficient magnitude or importance to make the work dangerous or undesirable or that removal of such work is impractical or will create conditions which are dangerous or undesirable. Just and reasonable value for such defective or non-conforming work will be determined by the County and appropriate deductions will be made in the payments due or to become due to the Contractor. The County's exercise of the rights under this provision shall be without prejudice to any other remedy the County may have, and shall not constitute a termination of the Contract.
- D. The Contractor and its sureties shall be liable for all damages and costs incurred by the County caused by the Contractor's or its Subcontractors' defective or non-conforming work or workmanship, including but not limited to all special, incidental, or consequential damages incurred by the County. The Contractor and its sureties agree to indemnify and hold the County harmless from any personal injury or property damage caused by the Contractor or its Subcontractors defective or non-conforming Work or workmanship.

4.8 SUBSTITUTION OF PRODUCTS

- A. After Contract execution, substitutions requested by the Contractor will be subject to the County's prior written acceptance and at the County's sole discretion.
- B. Requests for substitution must specifically identify:
 - 1. Material, equipment, and labor costs included in the Contractor's bid associated with the original item to be substituted;
 - 2. All costs for material, equipment, labor associated with the proposed substitution, including any impact costs;
 - 3. Proposed change to the Work Order Price and/or Work Order Time; and,
 - 4. Compatibility with or modification to other systems, parts, equipment or components of the Project and Contract Work.

- C. Contractor shall provide all documentation supporting its request as requested by the County.
- D. All costs of any redesign or modification to other systems, parts, equipment or components of the Project or Contract Work, which result from the substitution, shall be borne by the Contractor.
- E. When the County approves a substitution proposed by the Contractor, the Contractor shall guarantee the substituted article or materials to be equal to, or better than, those originally specified and shall be compatible with all other systems, parts, equipment or components of the Project and Contract Work. The County has the right to order an unaccepted, substituted article removed and replaced without additional cost to the County.
- F. If the County does not accept the substitution proposal the Contractor shall proceed, without delay or cost to the County, with the Contract Work as originally specified.

4.9 ACCELERATION

- A. The County reserves the right to accelerate Work Order Work. In the event that the County directs acceleration, such directive will be in writing and specifically designated as "Acceleration Directive." The Contractor shall keep cost and other project records related to the Acceleration Directive separately from normal project costs and records and shall provide a written record of acceleration to the County on a daily basis.
- B. In the event that the Contractor believes that some action or inaction on the part of the County constitutes an acceleration, the Contractor shall immediately notify the County in writing that the Contractor considers the actions an acceleration. This written notification shall detail the circumstances of the acceleration. The Contractor shall not accelerate their work efforts until the County responds to the written notification. If acceleration is then directed or required by the County, all cost records referred to above shall be maintained by the Contractor and provided to the County on a daily basis.
- C. In order to recover additional costs due to acceleration, the Contractor must document that additional expenses were incurred and paid by the Contractor. Labor costs recoverable will be only overtime or shift premium costs or the cost of additional laborers brought to the site to accomplish the accelerated work effort. The Contractor shall not be entitled costs associated with costs or damages associated with delay, inconvenience, disruption of schedule, impact, ripple effect, loss of efficiency or productivity, or consequential, incidental or special damages. Equipment costs recoverable will be only the cost of added equipment mobilized to the Site to accomplish the accelerated Work effort.
- D. To the extent the Contractor believes the acceleration constitutes a change in the Work impacting Work Order Time or Work Order Price, the Contractor shall submit a request to amend the Work Order to the Project Representative in accordance with provision 5.1, *Request for Amended Work Order*. If it is denied, the Contractor shall file a claim in accordance with provision 5.3, *Contractor Claims*.

ARTICLE 5: CHANGES TO THE CONTRACT

5.0 GENERAL

- A. All changes to the Contract must be made in writing and signed by the King County Executive or its designees. No oral statement by any person shall change or modify the Contract.
- B. Any written Field Directive, response to Request For Information, or other directive provided by the County shall not be considered an amendment to a Work Order, a change to Contract requirements, or constitute, in and of itself, entitlement to an adjustment in the Work Order's Price and/or Time. To the extent the Contractor believes the written Field Directive, response to Request For Information, or other directive constitutes changed Work impacting the Work Order Price or Time, the Contractor shall submit a request for an amendment to the Work Order to the County as more fully described herein.
- C. All Amended Work Order Work shall be performed in accordance with the original Contract requirements unless modified by the County.

5.1 CHANGES

A. Contractor's Request For Amended Work Order

- 1. Contractor may request, in writing, an Amended Work Order for any written Field Directive, response to an RFI or other directive (hereinafter referred to as "Direction" for the purposes of provision 5.1 A), which includes direction, instruction, interpretation, or determination from the County that the Contractor believes causes a change to the Work, Work Order Price, and/or Time. A Contractor may request, in writing, an Amended Work Order for any act of Force Majeure or to request a change to the Contract technical requirements. The Request for an Amended Work Order shall be submitted to the County, in writing, no later than 5 days after the Contractor receives the Direction. The Request shall include: (1) the date, circumstances, and source of the Direction; (2) the cost and time impact the Direction shall have on the Work Order Time and Work Order Price; and (3) Contractual provisions and substantive basis to support the Request. Likewise, the Contractor shall submit such a request no later than 5 days after the occurrence of the Force Majeure.
- 2. The County will make a written determination with respect to the Contractor's Request within 5 days of receipt of said Request, unless additional information is required by the County. The Contractor shall comply promptly with the County's request for additional information. The County will make a written determination within 5 days OF receipt of Contractor's additional information. If the County does not make a written request for information or a determination within the applicable 5 day time period, the request is deemed denied. If the Contractor disagrees with the denial, the Contractor's sole remedy shall be to file a fully documented Claim within 10 days of deemed denial or the Contractor's receipt of the denial in accordance with provision 5.3, *Contractor Claims*.
- 3. If the County determines that an Amended Work Order is necessary, the parties may negotiate acceptable terms and conditions and execute an Amended Work order.
- 4. Pending resolution of the Contractor's request, the Contractor shall continue to perform all Work including, at the written request of the County, that work

B. Change Orders

1. Change Orders

If the County and Contractor reach agreement on the terms and conditions of the Contract Documents, such agreement shall be incorporated into a Change Order and signed by both parties.

C. Differing Site Conditions

1. The Contractor shall immediately, and before the conditions are disturbed give written notice to the County of Differing Site Conditions, which are defined as: (a) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents, or (b) unknown physical conditions at the Site, of an unusual nature which differ materially from those ordinarily encountered and generally recognized as inherent in the construction activities of the character provided for in the Contract.
2. Unless otherwise agreed upon in writing by the County, within 10 days of the Contractor's initial written notifications of the Differing Site Condition to the County, the Contractor shall provide (a) a detailed description of the Differing Site Condition; (b) a reasonable estimate of the price and time impacts such Differing Site Condition shall cause to the Project; and (c) substantive, contractual, and technical basis supporting the existence of the Differing Site Condition and its impacts.
3. The County shall investigate the alleged Differing Site Conditions. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work, the Contractor may be entitled to an adjustment to the Work Order Price and/or Time. Failure by the Contractor to provide either (a) immediate notice or (b) the detailed description of impacts within 10 days as described above shall constitute a waiver of the Contractor's right to an adjustment to Work Order's Time or Price as a result of the Differing Site Condition. The Contractor shall be responsible for any and all costs or damages incurred by the County resulting from the Contractor's failure to provide appropriate notice and/or a detailed description of impacts.
4. Within 7 days from receipt of the Contractor's detailed description of impacts, the County shall either (a) issue a Change Order or Request for Change Proposal; (b) make a written determination that the event or condition does not justify any changes to the Contract, or (c) request additional information. If the County does not (a) make a written request for additional information, (b) issue an Amended Work Order or (c) make a written determination of the existence of a Differing Site Condition, the Contractor's request for determination of a Differing Site Condition and any associated time and money adjustments will be deemed denied.
5. If the Contractor does not agree with the deemed denial or the County's determination that the event or condition does not justify any change to the Work Order, the Contractor must within 14 days of the County's determination or deemed denial, file a fully documented Claim in accordance with provision 5.3,

Contractor Claims, or such right to any adjustment in a Work Order's Price and/or Time shall be waived.

6. The Contractor is required to continue with performance of all Work pending resolution of the Differing Site Condition and maintain its progress with the Work.

5.2 LIMITATION ON CHANGES

The Contractor shall not be entitled to any change in the Work Order Price and/or Time under the following conditions or events:

1. They were foreseeable at the time the Contractor submitted its bid;
2. They are not materially different from what is indicated in the Contract Documents;
3. They are not materially different from the kinds of events or conditions ordinarily encountered in construction activities of the character provided for in the Contract Documents; or,
4. They were caused by the acts of the Contractor or any Subcontractor, including but not limited to the choice of means, methods, techniques, sequences, or procedures for the Work, failure to provide labor, materials or equipment in a timely manner, and failure to take reasonable steps to mitigate delays, disruptions, or conditions encountered.

5.3 CONTRACTOR CLAIMS

- A. If the Contractor believes that it is entitled to an adjustment in the Work Order Price and/or Time under the terms of the Contract, the Contractor must file a fully documented Claim as provided in this Contract. The Contractor waives any Claim for additional time and/or compensation if it fails to comply with (1) the requirements set forth within this provision and (2) the applicable requirements stated within Article 3, *Contractor*, Article 5, *Changes to the Contract*, and Article 6, *Time and Price Adjustments*, or Article 8, *Termination and Suspension of Work*.
- B. Pending final decision of a Claim hereunder, the Contractor shall proceed diligently with the performance of the Work, including that work associated with the Claim and maintain its progress with the Work.
- C. Every Claim must be submitted by the Contractor, in writing and clearly designated by the Contractor as a fully documented Claim. At a minimum, a fully documented Claim must contain the following information:
 1. A detailed factual statement of the Claim providing all necessary dates, locations, and items of Contract Work affected;
 2. The date on which facts arose that gave rise to the Claim;
 3. The name of each person employed or associated with the Contractor, Subcontractor, and/or County with knowledge about the event or condition which gave rise to the Claim;
 4. Copies of documents and a written description of the substance of any oral communications that concern or relate to the Claim;
 5. The specific provisions of the Contract Documents on which the Claim is based;

6. If an adjustment in a Work Order Price is sought, the exact amount sought, calculated in accordance with this Article and Article 6, *Time and Price Adjustments* and accompanied by (a) all records supporting the Claim and (b) all records meeting the requirements of provision 3.10, *Cost Records*;
 7. If an adjustment in a Work Order Time is sought, the specific days and dates for which it is sought; the specific reason the Contractor believes the extension in the Work Order Time should be granted; and the Contractor's analyses of its Work Order Schedule, if required by the Project Representative, and all updates to demonstrate the reason for the extension in the Work Order Time; and,
 8. A statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of the Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Work Order Price or Time for which the Contractor believes the County is liable.
- D. To assist the County in the review of the Contractor's Claim, the County or its designee may visit the Site, request additional information and/or documentation in order to fully evaluate the issues raised in the Claim and/or audit the Claim. The Contractor shall cooperate with the County or its designee in the evaluation of its Claim and provide all information and documentation requested by the County or its designee.
- E. After the Contractor has submitted a fully documented Claim that complies with this provision, the County shall respond, in writing, to the Contractor within 21 days from the date the fully documented Claim is received with either (1) a decision regarding the Claim or (2) written notice extending for another 14 days the County's time to respond to the Claim. Absent a 14 day extension, the Claim shall be deemed denied upon the 22nd day following receipt of the Claim by the County. If the County had a 14 day extension, the Claim shall be deemed denied upon the 36th day following receipt of the Claim by the County.
- F. Contractor shall notify the County of its disagreement with the denial or deemed denial of the Contractor's within 7 days after the deemed denial or receipt of the denial. Failure to do so will result in a waiver of the Contractor's claim.

5.4 BURDEN OF PROOF ON CLAIM

- A. The Contractor shall have the burden of proof to demonstrate entitlement to any additive adjustments in Work Order Price and/or Time, and that the specific adjustment requested is consistent with the Contract Documents.
- B. If the Contractor or Subcontractor seeks an adjustment in the Work Order Price or Work Order Time not supported by Project cost records meeting the requirements of provision 3.10, *Cost Records*, the County shall be entitled to recover from the Contractor reasonable attorney's fees, consultant and/or expert witness fees, and other costs for establishing the Contractor's failure to comply with those requirements. If the County establishes non-compliance of the record keeping requirement set forth in provision 3.10, *Cost Records*, no adjustment shall be made to the Work Order Price and/or Work Order Time with respect to that Claim.
- C. No Claim submitted to Alternate Dispute Resolution (ADR) or pursued by the Contractor in litigation shall seek a greater increase in the Work Order Price or Work

Order Time than was set forth in the Contractor's Claim, except for accrual of any interest owing under applicable law.

5.5 LITIGATION

- A. As a mandatory condition precedent to the initiation of litigation by the Contractor against the County, Contractor shall:
 - 1. Comply with all provisions set forth in Articles 3, *Contractor* and 5, *Changes to the Contract* and 6, *Time and Price Adjustments*.
 - 2. Wait until the completion of the Work Order or expiration of the Contract Time.
- B. Any litigation brought against the County shall be filed and served on the County within 365 calendar days from the earliest of the following: (1) the issuance of the first Notice to Proceed; (2) completion of the Work Order in dispute, (3) expiration of Contract Time; or (4) termination of the Contract.
- C. Venue and jurisdiction shall vest solely in the King County Superior Court.
- D. Failure to comply with these mandatory condition time requirements shall constitute a waiver of the Contractor's right to pursue judicial relief for any Claim arising from work performed under this Contract.

ARTICLE 6: TIME AND PRICE ADJUSTMENTS

6.0 CHANGE IN THE TIME

- A. The Work Order Time shall only be changed by an Amended Work Order.
- B. No adjustment in the Work Order Time shall be allowed to the extent the time of performance is changed due to the fault, act, or omission of Contractor, or anyone for whose acts or omissions the Contractor is responsible. The Contractor may only seek an adjustment in Work Order Time for the number of days the act of Force Majeure or sole actions of the County actually delayed the Contractor from completing the Contract Work on time. Contractor is not entitled to an adjustment in Work Order Time if the act of Force Majeure or sole actions of the County do not impact Critical Path and delay the Contractor from completing Contract Work on time.
- C. When a Contractor experiences two concurrent delays, one caused by the County and the other caused by an act of Force Majeure or the Contractor, the Contractor shall only be entitled to an adjustment in Contract Time. No adjustment to the Work Order Price shall be allowed as a result of such concurrent delays.
- D. The Contractor may make a request for an adjustment in the Work Order Time by submitting a request for an Amended Work Order in accordance with the following procedure:
 - 1. A request for an adjustment in the Work Order Time shall be in writing and delivered to the County within the appropriate time period specified in Article 5, *Changes in the Contract*.
 - 2. Written notice shall be in sufficient detail to enable the County to ascertain the basis and amount of the time requested. At a minimum the Contractor shall provide a description of:
 - a. The event or condition which caused the Contractor to submit its request for adjustment;

- b. The nature of the impacts to the Contractor and its Subcontractors, if any;
 - c. How the event or conditions specifically impacted the Critical Path and overall Project Schedule; and,
 - d. The amount of the adjustment in Work Order Time requested.
- 3. Failure to provide timely written notice and documentation as required by the County to support the extension of Time shall constitute a waiver of Contractor's right to an adjustment in the Work Order Time.
- 4. Pending final resolution of any request for a change in Work Order Time, the Contractor shall proceed diligently with performance of all Work, including the work associated with such request and maintain its progress of the Work.
- E. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

6.1 CHANGE IN THE WORK ORDER PRICE

- A. A Work Order Price shall only be changed by an Amended Work Order. Contractor shall include any request for a change in the Work Order Price in its Request For an Amended Work Order, or Notice of Differing Site Conditions and Claim.
- B. No change in the Work Order Price shall be allowed to the extent (1) Contractor's changed cost of performance is due to the fault, acts, or omissions of Contractor, or anyone for whose acts or omissions Contractor is responsible; (2) the change is concurrently caused by Contractor and County; or, (3) the change is caused by an act of Force Majeure.
- C. The County shall not be responsible for, and the Contractor shall not be entitled to, unallowable costs. Unallowable costs include, but are not limited to, (1) interest or attorney's fees of any type other than those mandated by Washington state statute, (2) claim preparation or filing costs, (3) the cost of preparing or reviewing Change Proposals or Requests for Change Orders, (4) lost profits, lost income or earnings, (5) rescheduling costs, (6) costs for idle equipment when such equipment is not at the Site, has not been employed in the Work, or is not scheduled to be used at the Site, (7) lost earnings or interest on unpaid retainage, (8) Claims consulting costs, (9) the costs of corporate officers or staff visiting the Site or participating in meetings with the County, (10) any compensation due to the fluctuation of foreign currency conversions or exchange rates, (11) loss of other business, (12) and/or any other special, consequential, or incidental damages incurred by the Contractor or Subcontractors.
- D. Contractor may request for an adjustment in the Work Order Price in accordance with the following procedure.
 - 1. A request for an adjustment in the Work Order Price shall be in writing and delivered to the County within the applicable time period specified in Article 6, *Changes to the Contract*.
 - 2. Written notice shall set forth, at a minimum, a description of:
 - a. The event or condition which caused the Contractor to submit its request for an adjustment in the Work Order Price;
 - b. The nature of the impacts to Contractor and its Subcontractors, if any; and,

- c. The amount of the adjustment in Work Order Price requested.
- 3. Failure to provide timely written notice and documentation as required by the County to support the request for a change in Work Order Price shall constitute a waiver of Contractor's right to an adjustment in Work Order Price.
- 4. Pending final resolution of any request for a change in Work Order Price, Contractor shall proceed diligently with performance of the Work, including all work associated with the request for a change in Work Order Price and maintain progress of the Work.
- 5. Any requests by Contractor for an adjustment in the Work Order Price and in the Work Order Time that arise out of the same event or conditions shall be submitted together.
- E. The adjustments to the Work Order Price provided for in this Article represent full, final, and complete compensation for all work done in connection with the request for an adjustment in Work Order Price and all costs related to or resulting from, related to, or affected by such change in Work including, but not limited to, all direct and indirect costs, overhead, profit, and all costs or damages associated with delay, inconvenience, disruption of schedule, impact, dilution of supervision, inefficiency, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, and any other costs or damages related to any work either covered or affected by the change in the Work, or related to the events giving rise to the change.

6.2 METHOD TO CALCULATE ADJUSTMENTS TO WORK ORDER PRICE

- A. Adjustment to Work Order Price shall be in compliance with Section 00300, Form of Bid, and Section 01025, Measurement and Payment.

B. Deductive Changes to the Work Order Price

- 1. A deductive change to the Work Order Price may be determined by taking into account:
 - a. Costs incurred and saved by the Contractor as a result of the change, if any;
 - b. The costs of labor, material, and equipment saved by the change. These costs shall be calculated following as closely as possible with the provisions identified in Article 6, *Time and Price Adjustments*. The County is entitled to adjustments for Overhead and profit; and/or,
 - c. At the discretion of the County, costs set forth in the Contractor's bid documents.
- 2. Where the County has elected not to correct incomplete or defective Work, the adjustment in the Work Order Price shall take into account:
 - a. The decreased value to the County resulting from the incomplete or defective Work; and,
 - b. The increased future costs which the County may incur by reason of the incomplete or defective Work.

C. Full Compensation

An adjustment calculated in accordance with the provisions of this Article shall be full and complete compensation and final settlement of all changes and claims for all (a) time; (b) direct, indirect, and overhead costs; (c) profit; and (d) any and all costs or

damages associated with delay, inconvenience, disruption of schedule, impact, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, and/or any other costs or damages related to any work either covered or affected by the changed work, or related to the events giving rise to the change.

ARTICLE 7: PAYMENT AND COMPLETION

7.0 APPLICATIONS FOR PAYMENT

- A. Upon completion of a Work Order, the Contractor shall submit to County an Application for Payment. Each application shall be on a form acceptable to the County and designated as an "Application For Payment for Work Order No. ____." The Contractor shall include with each Application For Payment:
 - 1. Daily labor and equipment slips; and
 - 2. Material invoices; and
 - 3. any other documentation as required elsewhere in the Contract Documents.
- B. Inclusion of the required documentation is a condition precedent to payment. The Contractor is not entitled to payment for any work unless the application includes all required documentation. The County reserves the right to withhold payment pursuant to provision 7.2, *Payments Withheld* if it is subsequently determined that all required documentation was not provided by the Contractor.
- C. The application shall correlate the amount requested with the Work Order, Section 01025 Measurement and Payment and the unit prices and mark-ups of the Contractor's Bid, as found in Section 00300, Form of Bid.

7.1 PAYMENTS

- A. The County shall comply with RCW 39.76, as amended, and promptly review each Application For Payment and identify in writing any cause for disapproval within 8 working days. In addition to withholding payment for unsatisfactory performance or failure to comply with Contract requirements, if the Contractor's Application for Payment fails to recognize any back-charges, off-sets, credits, change orders, or deductions in payment made in accordance with provision 7.2, *Payments Withheld*, the County shall have the right to revise or disapprove Contractor's Application For Payment because the Application For Payment is not considered a properly completed invoice.
- B. If an Application For Payment is accepted by the County, it shall be paid within thirty days of County's receipt of the properly prepared invoice (Application For Payment), except that applications received near the end of the County's fiscal year may be paid within forty-five days of acceptance.
- C. The Contractor shall ensure that Subcontractors [and Suppliers] are promptly paid to the fullest extent required by RCW 39.04.250, as may be amended.

7.2 PAYMENT WITHHELD

In addition to moneys retained pursuant to RCW 60.28 and without waiver of any other available remedies, the County has the right to withhold, nullify, or back-charge, in whole or in part, any payment or payments due or that have been paid to the Contractor as may be necessary to cover the County's costs or to protect the County from loss or damage for reasons including but not limited to:

1. Failure of the Contractor to submit or obtain acceptance of a Progress Schedule, Schedule of Values, and any updated Schedules, if required by the Project Representative;
2. Defective or non-conforming Work;
3. Costs incurred by the County to correct, repair or replace defective or non-conforming Work, or to complete the Work;
4. A reasonable concern by the County that the materials, equipment or component parts are not in proper operating condition;
5. Failure to perform in accordance with the Contract;
6. Cost or liability that may occur to the County as the result of the Contractor's or Subcontractor's acts, omissions, fault, or negligence;
7. Deduction in Contract Work;
8. Failure of Contractor to repair damaged materials, equipment, property, or Work;
9. Failure of the Contractor to provide or obtain review of Submittals;
10. Failure to keep Record Documents up to date;
11. Failure to comply with all applicable federal, state, and local laws, statutes, regulations, codes, licenses, easements, and permits;
12. Failure to obtain and maintain applicable permits, insurance, and bonds;
13. Failure to provide Statement of Intent to Pay Prevailing Wage and/or Affidavits of Wages Paid; and
14. Failure to comply with the Contract safety requirements.

The withholding, nullification, or back-charge of any payment(s) by the County shall in no way relieve the Contractor of any of its obligations under this Contract.

7.3 TITLE

Title to all Work and materials covered by an accepted and paid Application For Payment shall pass to County at the time of such payment, free and clear of all liens, claims, security interest, and encumbrances. Passage of title shall not, however, (1) relieve Contractor from any of its duties and responsibilities for the Work or materials, (2) waive any rights of County to insist on full compliance by Contractor with the Contract requirements, or (3) constitute acceptance of the Work or materials.

7.4 RETAINAGE

RCW Chapter 60.28, concerning the rights and responsibilities of Contractor and County with regard to retainage are made a part of the Contract by reference as though fully set forth herein.

7.5 SUBSTANTIAL COMPLETION PROCEDURE

NOT USED

7.6 FINAL INSPECTION AND FINAL PUNCH LIST PROCEDURE

NOT USED

7.7 REQUIREMENTS FOR FINAL PAYMENT

In addition to any other requirement identified in the Contract Documents, prior to the release of retainage, the Contractor shall provide the following documents, if applicable, for all Work Orders:

1. Affidavit of Wages Paid for Contractor and all Subcontractors in accordance with state law;
2. Release of Lien Certification for every Subcontractor;
3. Copies of the warranties and guarantees required by the Contract;
4. Permit approvals and Certificates of Occupancy;
5. Operation and Maintenance Manuals;
6. Record Set of Drawings and Specifications (The record set shall be accurate, readable, and orderly, and shall be submitted in computer format and/or hard copy as required by the County. The Record set shall carry the Contractor name, date submitted and a notation identifying it as the project record documents);
7. Stamped permit set of documents and any other documents called for elsewhere in the Contract;
8. Right of Way, Easements and Property Releases; and,
9. All reports identified in the Affidavit and Certificate of Compliance with the King County Code 12.16.

7.8 FINAL ACCEPTANCE

- A. Final Acceptance shall be achieved as to each individual Work order upon the issuance by the County of a notice of completion
- B. Neither Final Acceptance of a Work order, nor payment for that Work Order, shall release Contractor or its sureties from any obligations under this Contract or the Performance and Payment Bonds, or constitute a waiver of any claims by County arising from or related to Contractor's performance or failure to perform the Work and to meet all Contractual obligations in accordance with the Contract, including but not limited to:
 1. Unsettled liens, security interests or encumbrances;
 2. Damaged, non-conforming, or defective Work discovered by the County;
 3. Terms of any warranties or guarantees required by the Contract; and,
 4. Payments made in error.
- C. Except for any Claims properly submitted in accordance with provision 5.3, *Contractor Claims*, acceptance of payment by the Contractor for a Work Order shall, on behalf of itself and its Subcontractors or Sureties, forever and unconditionally release and discharge the County, its officers, agents, employees, from (1) any and all disputes or claims, including but not limited to claims for damages, fines, interest, taxes, attorney fees, or costs, demands, rights, actions or causes of actions, known or unknown, arising out of or in any way related to the parties' performance under the that Work Order and (2) any and all known and/or unknown liabilities, obligations, demands, actions, suits, debts, charges, causes of action, requests for money and/or

7.9 WARRANTY AND GUARANTY

- A. In addition to any special warranties provided elsewhere in the Contract, Contractor warrants that all Work conforms to the requirements of the Contract and is free from any defect in equipment, material, design, or workmanship performed by Contractor or its Subcontractors.
- B. The warranty period shall be for the longer period of: one year from the date of Final Acceptance or the duration of any special extended warranty offered by a supplier or common to the trade.
- C. With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract, Contractor shall:
 - 1. Obtain all warranties that would be given in normal commercial practice from the supplier and/or manufacturer;
 - 2. Prior to Final Acceptance require all warranties be executed, in writing, for the benefit of County;
 - 3. Enforce all warranties for the benefit of County; and,
 - 4. Be responsible to enforce any warranty of a Subcontractor, manufacturer, or supplier, should they extend beyond the period specified in the Contract.
- D. If, within an applicable warranty period, any part of the Work is found not to conform to the Contract, the Contractor shall correct it promptly after receipt of written notice from the County to do so. In the event the County determines that Contractor corrective action is not satisfactory and/or timely performed, then the County has the right to either correct the problem itself or procure the necessary services, recommendations, or guidance from a third party. All damages incurred by County and all costs for the County's remedy shall be reimbursed by the Contractor.
- E. The warranty provided in this provision shall be in addition to any other rights or remedies provided elsewhere in the Contract or by applicable law.

7.10 PRIOR OCCUPATION

The County shall have the right to occupy such part or parts of the Project in or upon which the Work is being done, as it may see fit, before the Final Acceptance, and such occupation shall not be construed as acceptance by the County of the Work or constitute Substantial Completion of the Work.

ARTICLE 8: TERMINATION OR SUSPENSION OF THE WORK

8.0 COUNTY'S RIGHT TO NOT ISSUE ANY WORK ORDERS

- A. As this is a Work Order Contract, the Contractor is not guaranteed any amount of work. The County may, at its sole option, fail to issue any Work Orders under this Contract. If no Notice to Proceed is issued within 365 days of the Contract execution, then the Contract shall terminate or otherwise expire.

B. Termination for Default

1. County may terminate, without prejudice to any right or remedy of County the Work, or any part of it, for cause upon the occurrence of any one or more of the following events:
 - a. Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion of the Work within the Contract Time;
 - b. Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Final Acceptance of the Work in a timely manner;
 - c. Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
 - d. Contractor fails in a material way to repair, replace or correct Work not in conformance with the Contract;
 - e. Contractor repeatedly fails to supply skilled workers or proper materials or equipment;
 - f. Contractor repeatedly fails to make prompt payment to its employees or Subcontractors;
 - g. Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, permits, easements or orders of any public authority having jurisdiction;
 - h. Contractor fails to comply with all Contract safety requirements; or,
 - i. Contractor is otherwise in material breach of any provision of the Contract.
2. If the County reasonably believes that one of the aforementioned events has occurred, the County will provide the Contractor with written notice of its "Intent to Terminate" the Contractor for default, specifying within such notice the ground(s) for such termination. The County, at its option, shall require the Contractor to stop work as of the date in the notice of Intent to Terminate; or require the Contractor to promptly correct the deficiencies noted in the County's Intent to Terminate; or require the Contractor to provide the County with a corrective action plan as to how such deficiencies will be remedied or cured in a timely fashion. However, if after receipt of the proposed remedy, the County has a reasonable basis for concluding that the Contractor has (a) failed or is unwilling to repair, replace or correct the deficiencies, or (b) failed or is unwilling to provide a reasonable and satisfactory corrective action plan, the County shall thereafter have the right to terminate this Contract for default.
3. Upon termination, the County may at its option:
 - a. Take possession of the Site and possession of or use of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor; and/or,
 - b. Finish the Work by whatever other reasonable method it deems expedient; or,
 - c. Call upon the Surety to perform its obligations under the Performance and Payment Bonds, if applicable.

4. The Contractor and its sureties shall be liable for all damages and costs, including but not limited to: (1) compensation for architect and engineering services and expenses made necessary thereby; (2) any other costs or damages incurred by County in completing and/or correcting the Work; and (3) any other special, incidental or consequential damages incurred by the County which results or arises from the breach or Termination for Default.
5. In the event of Termination For Default the County shall only pay the Contractor for Work successfully completed and accepted by the County prior to the date of termination. The County shall not be responsible for any other Contractor costs, expenses, or damages including any consequential, special, or incidental damages or lost profits associated with this Contract. In no event shall the County reimburse the Contractor for any costs directly or indirectly related to the cause of this Termination for Default.
6. If, after Termination for Default, it is determined that the Contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the County.
7. The rights and remedies of the County in this provision are in addition to any other rights and remedies provided by law or under this contract.

C. Termination for Convenience

1. Upon written notice the County may terminate the Work, a Work Order or any part of them, without prejudice to any right or remedy of County, for the convenience of the County.
2. If the County terminates the Work or any portion thereof for convenience, Contractor may make a request for adjustment for:
 - a. Reasonable direct costs for all Work completed prior to the effective date of the termination and not previously paid for by the County;
 - b. A reasonable allowance for Overhead and profit for Work actually performed and accepted by the County prior to the date of termination, at a rate not to exceed the mark-up percentages bid by the Contractor and,
 - c. Actually incurred reasonable administrative costs for settlement of the Work terminated, at a rate not to exceed 15% of what the Contractor has been actually paid prior to the date of termination.
3. The Contractor shall not be entitled to any other costs or damages, whatsoever. The total sum payable upon termination shall not exceed the Work Order Price reduced by prior payments. Contractor shall be required to make its request for adjustment in accordance with Articles 3, *Contractor*, 5, *Changes to the Contract*, and 6, *Time and Price Adjustments*.
4. If it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the County shall not reimburse Contractor any profit for the Work completed and shall reduce the settlement to reflect the indicated rate of loss.

D. Contractor's Obligations During Termination

Unless County directs otherwise, after receipt of a written notice of Termination for Default or Termination for Convenience, Contractor shall promptly:

1. Stop performing Work on the date and as specified in the notice of termination;
2. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work not terminated;
3. Cancel all orders and subcontracts, upon terms acceptable to County, to the extent that they relate to the performance of Work terminated;
4. Assign as specifically requested by the County all of the rights, title, and interest of Contractor in all orders and subcontracts;
5. Take such action as may be necessary or as directed by County to preserve and protect the Work, Site, and any other property related to this Project in the possession of Contractor in which the County has an interest;
6. Continue performance of Work only to the extent not terminated; and,
7. Take any other steps required by the County with respect to this Project.

8.1 SUSPENSION OF WORK

- A. The County may order the Contractor, in writing, to suspend all or any part of the Work of this Contract for the period of time that the County determines appropriate for the convenience of the County. The Contractor shall not suspend the Work without written direction from the County specifically authorizing the Suspension of Work.
- B. Upon receipt of a written notice suspending the Work, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize costs attributable to such suspension. Within a period up to 120 days after the suspension notice is received by the Contractor, or within any extension of that period which the County requires, the County shall either:
 1. Cancel the written notice suspending the Work;
 2. Cancel the Work Order; or
 3. Terminate the Work Order or the entire Contract for either Default or Convenience.
- C. If a written notice suspending the Work is canceled or the period of the Suspension or any extension thereof expires, the Contractor shall resume Work as required by the County.
- D. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended by the written direction of the County, the Contractor may be entitled to an adjustment in the Contract Time, or Work Order Price, or both, for increases in the time or cost of performance directly attributable to such unreasonable suspension and provided that the Contractor sufficiently documents all costs and time impacts attributable to the suspension. No adjustments to Work Order Price and/or Work Order Time shall be allowed unless the Contractor can demonstrate that the unreasonable period of suspension caused by the County impacted Critical Path and delayed the Contractor from completing the Contract Work on time. The Contractor shall comply with the requirements of Articles 5, *Changes to the Contract*, and 6, *Time and Price Adjustments*, in seeking an adjustment. Failure to comply with these requirements shall constitute a waiver of Contractor rights to any adjustment in Work Order Time and/or Work Order Price.

- E. No adjustment shall be made under this provision for any suspension to the extent that Contractor's performance would have been suspended, delayed, or interrupted as a result of actions, omissions, fault or negligence caused, in whole or in part, by the Contractor or any of its Subcontractors.

8.2 COUNTY'S RIGHT TO STOP THE WORK FOR CAUSE

- A. If Contractor fails or refuses to perform its obligations in accordance with the Contract, County may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.
- B. Contractor shall not be entitled to any adjustment in the Work Order Time and/or Work Order Price for any increased cost or time of performance attributable to Contractor's failure or refusal to perform its obligations under the Contract.

ARTICLE 9: MISCELLANEOUS

9.0 CONTRACTOR'S PERFORMANCE AND PAYMENT BOND

No later than ten days after notice of selection, the Contractor shall execute and deliver to the County a performance and payment bond for 100% of the Not To Exceed Contract Price, on a form acceptable to the County with an approved surety company and in compliance with Chapter 39.08 RCW. The Contractor shall promptly furnish additional bond security to protect County and persons supplying labor or materials required by the Contract if:

1. County has a reasonable objection to any surety; or
2. Any surety fails to furnish reports on its financial condition pursuant to County's request.

9.1 INDEMNIFICATION/HOLD HARMLESS

- A. The Contractor shall protect, defend, indemnify, and save harmless the County, its officers, officials, employees, and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever (hereinafter "claims"), arising out of or in any way resulting from the Contractor's officers, employees, agents, and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Contract, to the maximum extent permitted by law or as defined by RCW 4.24.115, now enacted or as hereinafter amended.
- B. The Contractor's obligations under this section shall include, but not be limited to,
 1. The duty to promptly accept tender of defense and provide defense to the County at the Contractor's own expense.
 2. The duty to indemnify and defend the County from any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the Contractor's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the County with a full and complete indemnity and defense of claims made by the Contractor's employees. The parties acknowledge that these provisions were mutually negotiated upon by them.
 3. To the maximum extent permitted by law, the Contractor shall indemnify and defend the County from and be liable for all damages and injury which shall be caused to owners of property on or in the vicinity of the work or which shall occur

- C. King County may, in its sole discretion, (1) withhold amounts sufficient to pay the amount of any claim for injury, and/or (2) pay any claim for injury of which King County may have knowledge, regardless of the formalities of notice of such claim, arising out of the performance of this Contract.
- D. Any amount withheld will be held until the Contractor secures a written release from the claimant, obtains a court decision that such claim is without merit, or satisfies any judgment on such claim. In addition, the Contractor shall reimburse and otherwise be liable for claims costs incurred by King County, including, without limitation, costs for claims adjusting services, attorneys, engineering, and administration.
- E. In the event the County incurs any judgment, award, and/or costs arising therefrom, including attorneys' fees, to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Contractor.

9.2 COMPENSATION, WAGES, BENEFITS AND TAXES

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes owed by the Contractor by reason of this Contract. The Contractor shall indemnify and hold the County, its officers, agents, and employees, harmless against all liability and costs resulting from the Contractor's failure to pay any compensation, wages, benefits or taxes.

9.3 SUCCESSORS AND ASSIGNS

The County and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other with respect to all covenants, agreements and obligations contained in the Contract. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to it hereunder, without the previous written consent of the County.

9.4 THIRD PARTY AGREEMENTS

Except as otherwise may be provided, the Contract shall not be construed to create a contractual relationship of any kind between: any architect or engineer, or any Subcontractor, or any persons other than County and Contractor.

9.5 NONWAIVER OF BREACH

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County constitute an approval of or acquiescence in any breach hereunder, except as may be specifically stated by the County in writing.

9.6 NOTICE TO THE COUNTY OF LABOR DISPUTES

- A. If Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance in accordance with the Contract, Contractor shall immediately give notice, including all relevant information, to County.
- B. Contractor agrees to insert a provision in its Subcontracts and to require insertion in all sub-subcontracts, that in the event timely performance of any such contract is

9.7 LIQUIDATED DAMAGES AGAINST CONTRACTOR

The liquidated damage amounts, set forth elsewhere in the Contract Documents, will be assessed for Contractor's failure to complete the Work within the Work Order Time. These Liquidated Damages are not a penalty, but will be assessed against the Contractor for failure to achieve these Contract requirements. These Liquidated Damage amounts are fixed and agreed upon by and between the Contractor and County because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the County would in such events sustain. These amounts shall be construed as the actual amount of damages sustained by the County, and may be retained by the County and deducted from payments to the Contractor. Assessment of Liquidated Damages shall not release the Contractor from any further obligations or liabilities pursuant to the Contract.

9.8 HEADINGS

The headings used in the Contract are for convenience only and shall not be considered a part of or affect the construction or interpretation of any contractual provision therein.

9.9 CHOICE OF LAW

In the event that either party shall bring a lawsuit or action related to or arising out of this Contract, such lawsuit or action shall be brought in the Superior Court, King County, Washington. This Contract shall be governed by, and construed and enforced in accordance with the laws of the State of Washington.

9.10 SEVERABILITY

The provisions of this Contract shall be effective in all cases unless otherwise prohibited by Washington State Law or applicable Federal Law. The provisions of this Contract are separate and severable. The invalidity of any sentence, paragraph, provision, section, Article, or portion of this Contract shall not affect the validity of the remainder of this Contract.

END OF SECTION